

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

**7:00 P.M.**

**MAY 16, 2017**

**MEMBERS PRESENT:** Chairman David Rheume, Vice-Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Patrick Moretti, Chris Mulligan, Arthur Parrott

**MEMBERS EXCUSED:** Alternates: Peter McDonell, John Formella

**ALSO PRESENT:** Peter Stith, Planning Department

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**I. APPROVAL OF MINUTES**

A) April 18, 2017

*It was moved, seconded and **passed** unanimously (7-0) to approve the April 18, 2017 minutes as amended.*

B) April 25, 2017

*It was moved, seconded and **passed** unanimously (7-0) to approve the April 25, 2017 minutes.*

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**II. OLD BUSINESS**

A. Request for Rehearing for property located at 401 State Street

Mr. Mulligan recused himself from the petition.

Chairman Rheume stated that the applicant's attorney had made a good point that the Board had talked more about the nature of the business and less about the characteristics of the property in discussing the hardship test. He stated, however, that for a petition to be denied it had to fail just one of the five criteria and the Board had provided good reasons why the petition failed to meet all the other criteria.

**DECISION OF THE BOARD**

*Vice-Chair LeMay moved to **deny** the rehearing, and Mr. Parrott seconded the motion.*

Vice-Chair LeMay said he agreed with Chairman Rheume and saw nothing new in the petition's arguments. He said the Board gave a thorough airing to the conversation. He noted that the issue of foot traffic and so forth came up late, but he didn't think it was the primary reason for denying the variance. He said he didn't see anything new or sufficiently incorrect or lacking in the record.

Mr. Parrott concurred with Vice-Chair LeMay. He said when he read the argument stating that the Board made errors, he felt that what was being characterized as errors was just the reflection of the Board exercising its judgment, which was what they were supposed to do. The fact that it happened to differ with the request didn't make what they took as an action, and the reasons for it, an error so he would support the motion.

Chairman Rheume said he would support the motion. He said the applicant's attorney brought up some interesting points, but overall the Board wasn't overwhelmed by the representations of the abutters. He said there was some merit to the abutters' argument that the entrance was more residential than it was business so that the character of that particular property and the general character of how it fit into the neighborhood as a whole could potentially be changed. He stated that it was a defining characteristic for that neighborhood and concluded that the Board had sufficient justification to come to their conclusion.

*The motion **passed** by a vote of 6-0.*

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### III. PUBLIC HEARINGS – OLD BUSINESS

#### 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.

*(This petition was postponed from the April 18, 2017 meeting)*

Mr. Mulligan recused himself for the petition.

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

The attorney John Bosen was present on behalf of the applicant to speak to the petition. He introduced the owner of the company Ted Meadows and the engineer John Chagnon.

Attorney Bosen reviewed the petition. He said the applicant wanted to combine the three unique lots, demolish the existing structures, and build a retail facility. He reviewed the criteria and said they would be met. He also referred to the Master Plan and explained why the Board couldn't be guided by the Master Plan in their decision.

Vice-Chair LeMay asked for the dimensions for the building and the parking spaces. Mr. Chagnon said it was 134 feet parallel to Lafayette Road and 114 feet perpendicular, and the parking spaces were 9'x19'. Mr. Johnson asked about stormwater runoff, and Mr. Chagnon explained how it would be treated. Vice-Chair LeMay asked what the nearby building was, and Mr. Meadows said it was a house.

Chairman Rheume noted that there was a previous action that tried to change the zoning on the property but the intent was only for Lot 152. Attorney Bosen agreed.

Chairman Rheume discussed the Master Plan, noting that positioning buildings in a certain way could hide parking. He said the applicant shoved the building forward to Lafayette Road to try to do that. He asked whether they had considered something more unique instead of a standard cookie cutout pharmacy template. Attorney Bosen said they had certain dimensional and parking requirements that resulted in the chosen design. He said they moved the building forward on Lafayette Road but couldn't do it on Ocean Road. Mr. Chagnon explained the drive-through access and placing the parking near it. He said a grade change caused a large setback that would allow for landscaping to screen it from the Lafayette Road view.

Chairman Rheume asked what the distance was between the drive-up window and the property line. Mr. Chagnon said it was 88 feet, and 120+ feet from the building to the residential lot line.

The owner of Lot 152 Jonathan Bursaw said the petition was the best use for the property and asked the Board to support it.

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

Attorney Derek Durbin stated that he represented Chad and Christine Carter of 65 Ocean Road, which was the residence northeast of the lots. He gave a letter to the Board, which he then summarized. He said the applicant was trying to rezone the area to a gateway district type of use. He noted that the owner of the first house tried to rezone the lot in 2013 but was rejected by the City Council because it would have been a change in use and would have caused traffic concerns for the surrounding residences. He said the proposed use for a larger scale commercial

development would affect his clients, whose bedroom windows faced the proposed parking lot and ingress and egress. He noted that children going to the bus stop would be crossing in front of the ingress and egress. He said Lot 152 was currently in the MRB zone and was more consistent to a transitional zone, and to change it to a gateway type of use would be inconsistent with the spirit of the Ordinance. He said the applicant failed to meet all the criteria.

Christine Carter of 65 Ocean Road passed out photos and maps to the Board and said she had several signatures in opposition from other neighbors. She said that the surrounding houses were too close to the lots and that her residential community would change if the project was proposed. She noted that Lot 151 was a buffer from Route One and that the driveway would be moved closer to her home. She said her concerns were where the utilities and deliveries would be, drainage, noise, light, and the children crossing to go to school.

Robert Mayo of Ocean Road said he was opposed to the petition because they didn't need a giant building in the neighborhood. He also noted an original farmhouse that should be kept.

Maria Gregory of 85 Ocean Road said they already had a lot of traffic. She said the water tables were ledges and was concerned that dynamite would shake the neighboring foundations.

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

Attorney Bosen distributed letters of support to the Board. He said they studied the history of the three lots and concluded that they met the zoning. He noted the lot on the property that had been vacant for over 30 years with no new home built, so he didn't feel that a single residence was the obvious use. He said the lots were on Route One, with commercial uses on both sides and up and down. He said other uses allowed in the MRB zone were more intensive than what they proposed, and that it would be a code-compliant building that would go through site reviews.

Christine Carter said the most important issue was the character of the property. She pointed out that there was a home on Lot 151-1 that had been occupied for decades. She said the fact that Lot 151-2 had not been developed didn't mean that it couldn't have a home.

Rick Becksted of 1395 Islington Street noted that the drive-through indicated only a right turn onto Lafayette Road, which was a busy intersection. He said that the Department of Transportation had to approve the drive-through.

Robert Mayo said the memorial building was a residence at one time and noted that several back sides of homes would be facing the project.

Chairman Rheume read into the record that he received a letter and packet from Walter and Louise Novak who were also signatories on the presentation.

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

### **DECISION OF THE BOARD**

The Board discussed the petition. Mr. Moretti said he had concerns about traffic, the secondary exit going onto busy Lafayette Road, the crossing traffic coming off with a high speed lane coming off that and the potential for accidents due to the drive-through. He noted that 50 additional cars would be trying to get on Ocean Road at the stop light. He agreed that cars would shine lights into bedrooms and that there would be groundwater concerns.

Vice-Chair LeMay said the impact on the 65 Ocean Road home would cause them to lose three-quarters of the buffer between the parking and their location. He said it looked like an intense development for the corner and could understand why the applicant would want to do something commercial. He couldn't imagine anyone putting a home on that lot due to the traffic and noise.

Mr. Parrott said the applicant pointed to the commercial aspects of the neighborhood, which were mostly across the street. He said Lafayette Road was the dividing line between that commercial aspect and the Maple Haven neighborhood. He said it was a change in the neighborhood's character if an existing home that had been there a long time was turned into part of a large commercial development with parking. He noted that Lafayette Road going south had 100% residential homes, except for the memorial building. He pointed out that the commercial building down the street had been approved for conversion into 25 residential apartments. He said the applicant's property happened to be on the corner of the Maple Haven neighborhood and that all neighborhoods had to have some kind of border. He said the lots were clearly on the residential side of that section and seemed more residential than commercial because they formed part of Maple Haven. He said that traffic coming out of Lafayette Road had to take a road that directly opposed the traffic coming from the drive-through window, which begged for accidents, and that there was often a lot of traffic on Ocean Road waiting to get onto Lafayette Road. He said it was a busy intersection, and to put an additional driveway was asking for trouble. Mr. Parrott concluded that it wasn't a good traffic design.

Chairman Rheume said that Maple Haven and Elwyn Park were unique residential neighborhoods on Lafayette Road and that there was a lot of pressure to develop those properties for business purposes, but the zoning was protective of that as well as the fact that a lot of the properties were still zoned for single residence. He said that most of the parcel was single residence and that the abutters had the right to want something congruent with their neighborhood. He pointed out that the Burlaps store was positive for the neighborhood because it was small and convenient, but what was proposed was far different because it had a very intensive use and high traffic volume and would not provide a direct benefit for the neighborhood. For the Board to change the parcel to a retail one, Chairman Rheume said the application had to have better giveback to the neighborhood and that a cookie-cutter design drugstore wasn't it. He said it didn't meet the balance between the public good and the applicant's needs to make full use of their property.

*Mr. Moretti moved to **deny** the variances for the application as presented and advertised, and Vice-Chair LeMay seconded the motion.*

Mr. Moretti said he would refer to his previous comments. He said the Board had five criteria and only failing one was all that was needed to deny the petition and this had failed two of them. He stated that granting the variances would not do substantial justice because the property would

be over-intensified and would stretch the Mixed Residential B zone into a residential one. He said the unnecessary hardship was a stretch because the property that was in a residential zone would be over-intensified. He didn't feel that the unnecessary hardship test was met and the property could be developed with less intensity and more in character with the neighborhood. For those reasons, he said the petition failed.

Vice-Chair LeMay reiterated that shaving off the entire buffering for that one lot resulted in a big impact on one abutter in particular, which was significant. He said that the amount of impervious surface and the fact that there was little room to do anything for mitigation in terms of drainage would cause the drainage flow to become the neighbors' properties. He said there were ways to deal with impervious parking but felt that it was still a very intense use for the lot and that there was nothing except for the location of the lot to indicate a hardship.

Chairman Rheume said he would support the motion. He said that most of what was proposed was in a single residence area and the applicants were asking for a lot of relief which spoke to the spirit of the Ordinance. Overall the fact that they were listing all of the items related to a drive-through type of cookie cutter business indicated to the Board that this did not meet the intent of zoning and that something different was called for on the property.

*The motion passed by a vote of 6-0.*

#### **IV. PUBLIC HEARINGS – NEW BUSINESS**

##### 1) Case 5-1

Petitioners: Eugene & Pamela Hunter

Property: 495 Ocean Road

Assessor Plan: Map 283, Lot 35

Zoning District: Single Residence A

Description: Replace existing stairs with an 8'± x 16'± open porch.

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 20'± primary front yard where 30' is required and b) 17%± building coverage where 10% is the maximum allowed.
2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

Mr. Mulligan resumed a voting seat.

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

The owner Pamela Hunter was present to speak to the petition. She said the addition would improve her home. She also noted that the roof would be re-shingled.

Chairman Rheume asked whether she had a contractor, and Ms. Hunter said it was the same contractor who was repairing the roof.

Mr. Moretti noted that there were no front stairs and asked the applicant how she got out of the home. Ms. Hunter said she went out the side way because the sinking front steps were removed.

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

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

**DECISION OF THE BOARD**

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

Mr. Mulligan stated that it was a modest increase in the overall footprint of what was already a modest home and that there was sufficient reason why the applicant wanted a covered porch over the front door. He said it would improve the property, protect the front door from the weather, and increase the property's value. Mr. Mulligan stated that granting the variances would not be contrary to the spirit of the Ordinance, the essential character of the neighborhood would not be threatened, and the public's health, safety and welfare would not be impacted. Substantial justice would be met because there was no gain to the public if the petition were denied that would not be outweighed by harm to the applicant. He said there was no important reason to hold the property to the strict letter of the Ordinance because it was a modest increase in lot coverage and a reasonable increase of the front yard setback encroachment. He said that granting the variances would enhance the value of surrounding properties. As for the literal enforcement of the Ordinance resulting in unnecessary hardship, Mr. Mulligan said the special conditions of the property were that it was on a corner lot and the topography dropped down and caused a substantial grade change, so the front yard setback wasn't really impacted by what was proposed. He said it would not crowd up against Ocean Road. He said there was no fair and substantial relationship between the purposes of the setback and the lot coverage ordinances and their application to the property and that the petition met all the criteria.

Mr. Lee said he concurred with Mr. Mulligan. He said he drove by the house earlier and thought the porch would be an asset for the house and the applicant.

*The motion **passed** by a vote of 7-0.*

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2) Case 5-2

Petitioner: Pamela Gould  
 Property: 209 Clinton Street  
 Assessor Plan: Map 159, Lot 27  
 Zoning District: General Residence A  
 Description: Keep four chickens (hens) in a 73" ± x 38" ± movable coop.

- 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 #17.20 to allow the keeping of farm animals in a district where the use is not allowed.

Mr. Moretti recused himself from the petition.

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

The owner Pamela Gould stated that the chicken coop would meet the zoning standards and wouldn't be noticeable from the road. She said she wanted four hens.

Chairman Rheume noted that it was a movable coop and that there were setback requirements. Ms. Gould said there would be no foundation and that it would stay in place.

Martha Caverly of 199 Clinton Street said she lived next door and was in support of the project.

Abby Gindale of 229 Clinton Street said she was in support and noted that they got rid of ticks and grubs and provided great food.

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

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

### **DECISION OF THE BOARD**

*Mr. Lee moved to **grant** the variance for the application as presented and advertised, with the following stipulation:*

*- That there be no more than six hens, and no roosters.*

*Mr. Johnson seconded the motion.*

Mr. Lee stated that granting the variance would not alter the essential character of the neighborhood nor threaten the public's health, safety and welfare. He said it would not be contrary to the public interest, would observe the spirit of the Ordinance, and would do substantial justice. He said the applicant would enjoy fresh eggs and chickens. He said that granting the variance would not result in unnecessary hardship.

Mr. Johnson said it was a modest request that had the support of the neighbors, and he also noted that it had been proven that the chickens would not be too much of an annoyance to the abutters.

Vice-Chair LeMay said he wasn't generally comfortable keeping chickens on small lots. He said that general residence zone tended to have smaller lots than others and that the lot was two-thirds of its minimum required size. He concluded that there was no hardship that justified keeping chickens and that, as a matter of principle, he could not support the petition.

*The motion passed by a vote of 5-1, with Vice-Chair LeMay voting against the petition.*

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3) Case 5-3

Petitioners: Brick Act LLC, owner and Kristin Fichera, applicant  
Property: 100-102 State Street  
Assessor Plan: Map 107, Lot 52-1  
Zoning District: Character District 4  
Description: Operate a preschool for a maximum of 20 children where no off-street parking is provided.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
1. A Variance from Section 10.1112.30 to provide no off-street parking spaces where 0.5 spaces per client licensed capacity are required.

Mr. Moretti resumed a voting seat.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Tim Phoenix on behalf of the applicant was present to speak the petition. He introduced the applicant Kristin Fichera. Attorney Phoenix reviewed the petition in detail.

Ms. Fichera stated that she was the owner of the Treehouse School and that she would reside in #102 State Street. She said she wanted to provide working parents with a downtown preschool and hoped to be a positive pillar for the community.

Attorney Phoenix stated that the applicant would have one full-time employee and would operate on the same schedule as the public schools. He said the parents would drop off their children between 7:45 and 8:45 a.m. and that afternoon pick-up would be staggered. He said the zoning relief was needed because the lot couldn't provide parking.

Attorney Phoenix passed out a packet listing the abutters who supported the project. He noted that the need for parking was less than that for a commercial establishment and that parents would park on nearby streets or walk the children to the school, so parking spaces weren't required. He distributed a packet of context photos to the Board. He said the building and use were no different from others in the downtown overlay district that required no parking, and he noted that the intensity was very low. He said the photos were taken at the various times that the children would be dropped off and picked up, indicating parking availability. Attorney Phoenix reviewed the criteria in detail and said they would be met.

Mr. Johnson said the proposal was a fantastic idea but had concerns with the parking situation, especially during the winter, tourist season, and when the bridge was up, which he felt the photos didn't reflect. He said it was human nature for people to think that, when parking in a no-parking zone, it would only be for a minute. Attorney Phoenix said they would discourage double parking or parking in loading zones and would educate the parents about parking.

Vice-Chair LeMay said it was overall a positive proposal. He asked which of the two allowed daycare categories the applicant proposed, the family daycare or the group daycare. Attorney Phoenix said he thought it was the group daycare facility. Vice-Chair LeMay said the group facility required a special exception. Attorney Phoenix said it was permitted in the zone but that the parking required a variance. Vice-Chair LeMay said the proposal didn't meet either definition of a daycare, and it was further discussed. Attorney Phoenix said it wasn't really a daycare but a preschool, and Vice-Chair LeMay said he was okay with it.

Mr. Mulligan asked why that stretch of State Street got by the downtown overlay district. Attorney Phoenix said he was told that when it was proposed, one or more other property owners in the area objected to being in the overlay district and lobbied to have it carved out.

Chairman Rheume said there was a loading zone in front of the property that would be a magnet for people to park in and that afternoons could be a concern as well as double parking. Attorney Phoenix said it was assumed that the parents would follow the rules and that they would be directed to appropriate parking places. He said he couldn't guarantee that double parking and misuse of the loading zone wouldn't happen, but their research showed that there was available parking in the morning and afternoon. He said the applicant also looked into nearby businesses that would allow people to park temporarily. He asked the Board to consider that it was a unique use and that the effect on parking was less than that of a retail store or business.

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

Justin Nadeau said he was a Portsmouth resident and practiced law up the street. He said the drop-off was not a simple process and that the Board had to consider the traffic, the winter parking ban, and safety. He asked what would happen if emergency vehicles needed access.

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

Attorney Phoenix said that the location and emergency vehicle access were the same for any other location because it was a crowded urban area and that it was no reason to deny the variance. He also noted that Mr. Nadeau had no standing in taking a position in a zoning matter.

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

#### **DECISION OF THE BOARD**

The Board discussed the petition. Vice-Chair LeMay said that parking could be a horror in that area, but in the CD4 district it was a permitted use and there was no other place where parking would be much better. Mr. Johnson said it was comparable to going into town and picking up a cup of coffee and then returning to a vehicle.

Mr. Mulligan said that any business in that location would face the same parking issues and that emergency access to the site would be the same no matter what the use was. He said he wasn't convinced that there were unworkable safety issues and thought the parking would resolve itself

either by the customers figuring out how to get there effectively or deciding that it was too much trouble and going elsewhere. He said businesses of that type generated a lot of trips throughout the day and that downtown was still standing, so he had no problem with it.

Mr. Lee said he saw the loading zone at the front door as a magnet for unloading the children, especially from noon on. Mr. Moretti said downtown was becoming more residential and he felt that there would be more walkers coming from nearby homes.

Chairman Rheume said he was torn because he thought the residences were attracting single nesters rather than families and saw the preschool as a car-based business with a problematic afternoon drop-off and pick-up. He agreed that the loading zone would be a magnet during the rain and snow, and that getting a child out the passenger side of the car would be difficult. He felt that it wasn't a safety issue but an inconvenience to an already crowded and difficult area for vehicles to navigate under difficult time periods. He said he had concerns about that specific application in that specific location and thought there could be something workable a bit further from State Street where there wasn't such intense traffic.

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

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance. He said the essential character of the dense urban neighborhood would not be altered in any way if the petition were approved, nor would the public's health, safety and welfare be threatened. He noted the discussion about possible parking and other impacts but thought they could be negligible. He said that, except for the loading zone, the property was indistinguishable from anywhere else in the downtown overlay district, where no parking would be required. He said that granting the variance would result in substantial justice in balancing the loss of the applicant against some gain to the public if denied. He said that the Ordinance couldn't be strictly enforced as written because there was no possibility of putting off-street parking associated with the property. Granting the variance would not diminish the value of surrounding properties because the use was a benign one. If parking, pick-ups and drop-offs were too problematic, then the business would suffer. As for unnecessary hardship, he said that enforcing the parking ordinance was impossible because there was no place to site off-street parking. Mr. Mulligan said there were special conditions and that there was no fair and substantial relationship between the purpose of the off-street parking requirements and their application to the property. He said the petition met all the criteria and should be approved.

Mr. Johnson referred to his previous comments and said he concurred with Mr. Mulligan.

Vice-Chair LeMay said that Mr. Mulligan was correct in saying that the business would suffer unless the applicant found a way to make the drop-off attractive to the clients.

*The motion **passed** by a vote of 5-2, with Chairman Rheume and Mr. Lee voting against the petition.*

## 4) Case 5-4

- Petitioner: Deer Street Associates  
 Property: 165 Deer Street (Lot/Building 3)  
 Assessor Plan: Map 125, Lot 17  
 Zoning District: Character District 5 and Downtown Overlay District  
 Description: Construct a 5-story mixed use building with enclosed off-street parking utilizing a lift system.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.516.20 to allow a 5'± rear yard adjoining a railroad right-of-way where 15' is required.
  2. A Variance from Section 10.1114.21 to allow 62 parking spaces utilizing a two-car lift system in each bay that does not meet the required dimensions for parking spaces.
  3. A Variance from Section 10.1114.32(a) to allow vehicles to enter and leave parking spaces by passing over another parking space or requiring the moving of another vehicle.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Phoenix on behalf of the applicant was present to speak to the petition. He introduced the architects Tracy Kozak and Mark Mueller, Kim and Anea Rogers of GL Rogers, the owner's representative Steve Leonard and civil engineer Mike Penney.

Attorney Phoenix reminded the Board that they were before them previously for Lot 4 and that the current proposal was for Lot 3. He said Lot 4 would be used to get to the parking garage and that they proposed a 5-story mixed-use building as part of the overall project. He said 62 parking spaces would be tiered with a lift system, and he gave the Board photos of a sample lift system. He said the lift would be operated only by valets and would be mainly for hotel and restaurant guests. He reviewed the criteria in detail and said they were met.

Chairman Rheume noted that the document showed a European-manufactured lift system with six different models and said European cars were much smaller than American ones. He asked what height would be necessary to park larger vehicles like SUVs. Attorney Phoenix said the lift would handle passenger vehicles up to the average SUV size and that there would be additional garage parking that wasn't subject to the lift system.

Chairman Rheume asked about the parking spaces that were indicated by the letter 'T'. Mr. Mueller said it meant a tandem space, meaning that a vehicle would have to be driven under one lift and into another.

Chairman Rheume asked which building would come before the Board the following month. Attorney Phoenix said they were all interrelated. He said Building 6 needed no variances, and that Building 5 was under HDC review and would require at least one variance for the railroad. He said that Lot 4 was critical because it provided services to Lots 3 and 5. He said the best process was to go before the Board with each building. Chairman Rheume said he was

concerned with the public's perception and felt that the multiple presentations left a negative impression. He also noted that it was a time factor for the Board.

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

Rick Becksted of 1395 Islington Street said he had a problem with the process and that the project had not been approved for 60 feet, that Lots 3 and 6 were part of the incentives package, the height had not been determined, and the lifts would involve a lot of movement. He noted that it was not an approved 5-story building and still had to go before the Planning Board.

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

Attorney Phoenix stated that no information about the project was hidden and that they met with the Planning Department several times. He said that the railroad and lift parking were before the Board and that all other issues were not relevant to the present discussion.

Mr. Becksted said he had concerns with the 5-story mixed-use building with enclosed parking utilizing lift systems and felt that the Planning Board should approve it first.

Attorney Phoenix stated that the Technical Advisory Commission advised them to get their variances first. He said the Board was not approving a 5-story building that evening.

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

### **DECISION OF THE BOARD**

Mr. Johnson asked whether it was the Board's job to determine the process or evaluate the application that the Planning Board had vetted. Chairman Rheume said the Planning Board made that determination but that typically the BOA was the first land-use board and the most legalistic one. He said they were approving three variances, not a 5-story building, and were concerned with the first-floor parking system and the railroad. Vice-Chair LeMay said he wasn't concerned with the tandem parking because the valets would be trained to park and it would be a place to store the cars. He said the biggest concern was whether they could store that number of cars. He said the applicant wasn't asking for a lot of variances.

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

Vice-Chair LeMay stated that granting the variances would observe the spirit of the Ordinance and not affect the character of the neighborhood. He said whether the cars were stacked or not wouldn't change the exterior view to the public. He said the area defined what the neighborhood was and that the project was consistent with what was previously presented. He noted that the HDC would deal with the building's height. He said granting the variances would not diminish the value of surrounding properties because the project would provide adequate parking for the proposed use, which he felt was in the City's interest. As for unnecessary hardship, he said the location of the railroad tracks in respect to the 5-ft setback defined the need for the setback. He

said it would be unreasonable if the building wasn't developed due to the parking variance not being granted. He said granting the variance would do substantial justice. If the Board said the applicant could have only 40 parking spaces or so, then it wouldn't be in the interest of the public or the applicant and would put pressure on the parking that the City desperately needed. He said there was no benefit to the public that outweighed the hardship to the owner. Mr. Mulligan concurred with Vice-Chair LeMay and said he had nothing to add.

*The motion **passed** by a vote of 7-0.*

*It was moved, seconded, and **passed** (7-0) to go past the 10:00 deadline.*

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#### 5) Case 5-5

Petitioner: Steven J. Craige  
 Property: 10 Humphreys Court  
 Assessor Plan: Map 101, Lot 43  
 Zoning District: General Residence B  
 Description: Replace existing one-car garage with a two-car garage.  
 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 right side yard of 2'-10.25" ± where 10' is required; b) an 8'1" ± rear yard where 25' is required; and c) 33.9%± building coverage where 30% is the maximum allowed.
2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

Mr. Parrott recused himself from the petition.

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

Jennifer Ramsey of SOMMA Studios on behalf of the applicant was present to speak to the petition. She noted that the existing garage was previously approved by the Board. She showed photos and the site plan and reviewed the criteria, saying they would be met. She passed out letters to the Board in support of the project.

Mr. Lee noted that the letters of support were from people who didn't live on the street. Ms. Ramsey replied that there were two immediate neighbors on Humphreys Court and that the other ones were behind the home.

Vice-Chair LeMay said that there was one significant difference in what was previously approved, which was the addition of a second story in the garage for a future bedroom. Ms. Ramsey said the previous applicant had the same use and that the mass had grown to accommodate two car spaces.

**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 there was a slight discrepancy in the Public Notice, where the given figure was off by a foot or so.

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

Mr. Lee stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the value of surrounding properties would not be diminished because the project would improve the home and the neighborhood and make the home look more conforming to the other houses as well as more livable for the owner.

Mr. Johnson concurred with Mr. Lee. He said that the setback encroachments were close but there were a lot of smaller properties in that part of town. He said the project fit into the category. He said the house was situated to one side and pushed the existing garage and driveway access on Humphreys Court near the neighbor and, with the skewed property line, brought the most offending corner of the garage closest to the setback line.

Chairman Rheume said he would support the motion. He said he was a bit concerned that the two-car garage would take up some light and air but agreed that it was a tight neighborhood and other lots had the same types of setbacks and encroachments.

*The motion **passed** by a vote of 6-0.*

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Mr. Parrott resumed a voting seat. Mr. Johnson recused himself from the petition.

6) Case 5-6

- Petitioners: Matthew & Katherine Menchen  
Property: 416 Ocean Road  
Assessor Plan: Map 293, Lot 12  
Zoning District: Single Residence A  
Description: Keep chickens (hens) in a mobile coop.  
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 #17.20 to allow the keeping of farm animals in a district where the use is only allowed by Special Exception.

**SPEAKING IN FAVOR OF THE PETITION**

The owner Katherine Menchen was present to speak to the petition. She said she wanted a flock of chickens and showed the proposed location of the coop.

Vice-Chair LeMay asked whether there was a setback from the wetland that wound up in the yard. Ms. Menchen said they had a buffer on each side and that part of the wetland buffer line was in the yard. Mr. Moretti asked what Ms. Menchen considered a flock. Ms. Menchen said she didn't want more than eight chickens.

Chairman Rheame asked what the mobile coop would be placed on. Ms. Menchen said it would have handles so it could be moved. In response to further questions from Chairman Rheame, she said the coop would be close to the house and would meet her needs despite the wetland buffer constraint. She said the chickens would be kept in the coop most of the time.

Mr. Lee asked whether there was a fence. Ms. Menchen said she had an 8-ft fence between the neighbors.

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

Susan Williams of 419 Ocean Road said there was a wildlife habitat across the street with hawks and fisher cats and was concerned that they would eat the chickens. She said she was fine with the number of chickens allowed and that the odor wouldn't reach her house.

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

Ms. Menchen said she planned to keep the chickens in the coop.

### **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the special exception for the application as presented and advertised, with the following stipulation:*

- that there be no more than eight chickens and no roosters.*

*Mr. Parrott seconded the motion.*

Mr. Mulligan stated that the use was permitted in that zone by special exception and would result in no hazard to the public or adjacent properties from potential of fire, explosion, or release of toxic materials. He said there would be no detriment to property values in the vicinity or change in the essential characteristics of the area from the location of structures, odors, smoke, dust or other pollutants, noise, heat or other irritants or unsightly outdoor storage of vehicles or other materials. He said it was a minor ancillary use in a residential neighborhood and none of the negative impacts were a factor. Mr. Mulligan said there would be no traffic impact at all from the use, so there would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion. He said that the keeping of a maximum number of eight chickens and no roosters would not result in any excessive demand on municipal services including water, sewer, waste disposal, police and fire protection, nor would there be a significant increase in storm

water runoff onto adjacent property or streets. He said that all the criteria for a special exception were met and felt that the petition should be approved.

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

*The motion **passed** by a vote of 6-0.*

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## **V. ADJOURNMENT**

*It was moved, seconded and **passed** unanimously (7-0) to adjourn the meeting at 10:55 pm.*

Respectfully submitted,

Joann Breault  
Recorder