

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

7:00 P.M.

**SEPTEMBER 26, 2017
Reconvened From
SEPTEMBER 19, 2017**

MEMBERS PRESENT: Chairman David Rheame, Vice-Chairman Charles LeMay, Jeremiah Johnson, Patrick Moretti, Chris Mulligan, Arthur Parrott, Jim Lee, Alternate John Formella, and Alternate Peter McDonell

MEMBERS EXCUSED: Jeremiah Johnson

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheame asked that Case 9-10 be taken out of order so that it could be postponed.

*It was moved, seconded, and unanimously **passed** (7-0) to take Case 9-10 out of order.*

Chairman Rheame then read Case 9-10 in the record.

*Mr. Moretti moved to **postpone** the petition to the October meeting, and Mr. Parrott seconded.*

Mr. Moretti stated that the petition's representative was out of town, that it was his first request for postponement, and that it was routine for the Board to postpone a petition on a first request. Mr. Parrott concurred with Mr. Moretti and had nothing to add.

*The motion **passed** by unanimous vote (7-0).*

IV. PUBLIC HEARINGS – NEW BUSINESS (continued from the September 19, 2017 meeting)

6) Case 9-6

Petitioners: Todd N. Creamer, owner, Todd N. Creamer and Cari M. Feingold, applicants
Property: 199 Union Street
Assessor Plan: 135, Lot 69
Zoning District: General Residence C
Description: 10'± x 14'± replacement shed.
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 a 2' ± right side yard where 10' is required.
2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

The alternate Mr. Formella assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

The owners and applicants Todd Creamer and Cari Feingold were present to speak to the petition. Mr. Creamer said they wanted to replace a dilapidated shed with a similar but larger shed. He reviewed the criteria and said they would be met. He also noted that he received a letter of support from the owner of the nearby condominiums.

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

Mr. Parrott said it was a simple proposal and that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said nothing about the project would change the neighborhood's character, the public's health, safety, or welfare, or otherwise injure public rights. He said the shed wouldn't be in anyone's way on the applicant's property or adjacent to it and that it was simply replacing a long-time shed with one that was slightly larger. Granting the variances would do substantial justice because there was no benefit to the public that would outweigh the benefit to the owners. He said the value of surrounding properties would not be diminished and would in fact be positive for the owner's property as well as adjacent properties because the existing shed was worn out and probably considered an eyesore by some. He said the applicant made a logical argument about the shed's placement, and even though it was a bit larger, it made sense to put it where proposed because the existing yard was small and there was a large building with parking on that level, so there would be no interference with anyone's view out their window. Mr. Parrott said that literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property, including the small size of the backyard that did not lend itself to placing the shed in any other location. He said the project met the hardship criteria and that the variances should be granted.

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

*The motion **passed** by unanimous vote (7-0).*

7) Case 9-7

Petitioners: Pamela Thacher, owner, Charles Seefried, applicant
Property: 180 Middle Street
Assessor Plan: 127, Lot 8
Zoning District: Mixed Residential Office
Description: Create five dwelling units.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. Variances from Section 10.521 to allow the following: (a) a lot area per dwelling unit of 4,763± s.f. where 7,500 s.f. is required; (b) a 1'± right side yard setback for the carriage house where 10' is required; and (c) a 0.8 0.8'± rear yard setback for the carriage house where 15' is required.
2. A Variance from Section 10.1114.20 to allow a two-way maneuvering aisle, in the parallel parking space area, of 16'± where 24' is required.

Mr. Mulligan recused himself, and alternate Mr. Formella retained his voting seat. Alternate Mr. McDonell also assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He introduced the owner/applicant Charles Seefried, the consultant Peter Weeks, and the engineer Alex Ross. He also noted that the architect Steve McHenry would be present but was delayed.

Mr. Seefried gave a brief history of the property and said his goal was to maintain and preserve the interior, exterior, and outdoor space.

Attorney Phoenix noted that they would have a work session with the Historic District Commission (HDC) and that they had met with the Technical Advisory Committee (TAC) and that both meetings were positive. He reviewed the existing features site plan and the proposed site plan. He noted that the historic house and carriage house were built in 1815 and were in their original locations and forms, with a few back additions, and that the driveway entrance was situated in the only place that it could be. He said the fence was part of the HDC review and was likely to remain. He said they wanted to convert the single-family home to five units, four in the main structure and one in the carriage house. He also noted that there would be a formal Federal garden behind the building. He emphasized that the historic foyer would allow the entrance to be split for the two first-floor units and that the owner would take the property back to its former glory, including the widow's walk. He said the driveway would be gravel with pavers.

Attorney Phoenix passed out copies of a letter of support from one of the applicant's neighbors. He then addressed the variances, noting that 21 surrounding properties had greater densities and that the property was one space away from a zone that they would comply with. He said the other variance was for the carriage house because it was too close to the lot line. He reviewed the criteria in detail and said they would be met. He also remarked that the Planning Department vetted the parking and that the HDC and TAC had no problems with it. He said a storm water

management plan would be prepared and addressed by TAC and the HDC. He said the parking would not be seen because it would be fenced and heavily vegetated.

Chairman Rheume asked whether there was evidence that the interior was previously subdivided in the past 200 years, and Attorney Phoenix said there was not.

Chairman Rheume asked what the impact to the historic structure would be if someone wanted to reconvert it back to a single-family home. Mr. McHenry said the only major add-on to the interior was a second means of egress staircase from the second and third floors; otherwise, all the original interior doors and walls would be maintained as much as possible. Chairman Rheume concluded that the walls could be reversed, and Mr. McHenry agreed.

SPEAKING IN OPPOSITION TO THE PETITION

Mark Wilbur of 199 Middle Street said he lived across the street and was concerned about drainage and traffic. He asked whether there was a drainage plan. He also felt that it would be a challenge and a safety hazard for additional vehicles to leave the driveway and that those issues could affect his property's value.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Peter Weeks of PGW Real Estate Consulting said he was present on behalf of the applicant and that he also had an email in support of the project from a direct abutter, Sean Mahoney. He read the email to the Board.

Alex Ross said he prepared the engineering plans and that there was a drainage study. He said there would be no pavement installed on the site, so storm water would not be increased. He said the drainage would be controlled by pervious pavers and that roof runoff would be controlled by gutters and downspouts, and that they would work with TAC on driveway and traffic issues.

Chairman Rheume asked what the challenges were from the cobblestone installed on the parallel parking spots for vehicle access and egress. Mr. Ross said it was to separate the spaces and make access and egress easier. He said they made the driveway extra wide and had a turn-around area. Chairman Rheume asked how the cobblestone would impact drainage. Mr. Ross said they planned to have a mix of cobblestone areas and cobblestone with a pervious stone beneath them. He said the traffic flow was small on the site and that a small gravel driveway would be okay. He said the vehicles would be able to turn around and go forward so that they wouldn't have to back out into traffic.

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

DECISION OF THE BOARD

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

Vice-Chair LeMay said that the presentation was straightforward. He noted that the setback was relatively minor, considering the project's totality, and that the density would not be contrary to the public interest or to the spirit of the Ordinance. He said the density wasn't unusual for that area and that it didn't seem extreme for the property, especially with the relatively large setbacks from the main building, except for the setback asking for a variance. He said that granting the variances would not change the neighborhood in any substantial way or conflict with the purposes of zoning. It would not diminish surrounding property values because of the good setback and screening. He said the abutters were removed from the boundaries on the sides and wouldn't notice a lot of difference. He said the driveway was pervious and there was no significant change to the drainage and no additional encroachment on the abutters. As for unnecessary hardship, he said the property was very large and to preserve it historically required an increase in density for the arrangements of the apartments in the buildings. He said the residential use was reasonable, and given the history of the property and its size, denial would result in unnecessary hardship. He said granting the variances would do substantial justice because there would be no benefit to the public in denying the variances, especially because the building would visually remain very similar, which was in the public interest.

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

Chairman Rheame said he would support the motion with some trepidation. He said it wasn't that easy to say that a property that had been in a particular state for over 200 years could be subdivided into something else. He said that he believed the owner was trying to do the right thing for the property overall, as far as the number of units and their disposition, and he was amazed that it hadn't already been subdivided. He said that if there was a request to build the carriage house new, the Board wouldn't allow the type of approach to the edge of the property, but as pointed out, it was an existing structure that, whether it remained a carriage house or became a dwelling unit, didn't significantly affect its ability to be maintained. He said the Board had a few concerns with things being so close to the property in terms of light and air, but the carriage house had been there for a long time and people had come to accept it. He said the ability to maintain it was another concern, but he didn't think that the change would affect its maintenance significantly, whether it was a carriage house or converted to a dwelling unit. Its presence along the property edge was something that the Board overall tried to avoid, but he said it was livable in this case. He noted that a lot of driveway area was being added and the owner was trying to accommodate the parking for the units and the neighbors. He said the negative was that the grass would be converted to a paving source, but the owner was picking paving choices that were good for water runoff, and it would be reviewed by the Planning Board and TAC. He said there had been an effort to minimize the impact, and it was fairly substantial and gave him some pause about whether or not the project made sense, but he said it wasn't enough to overcome the criteria the Board had to go by. He said he was saddened that the historic home couldn't be preserved the way it currently was, but knew it was difficult to find a large historical structure and go through the expense of maintaining it.

The motion passed by unanimous vote (7-0).

8) Case 9-8.

Petitioner: Woodbury Cooperative Inc.
Property: 1338-1342 Woodbury Avenue
Assessor Plan: 237, Lot 70
Zoning District: Mixed Residential Business
Description: Add four manufactured homes.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. Variances from Section 10.521 to allow the following: (a) a lot area per dwelling unit of 3,149± s.f. where 7,500 s.f. is required; (b) right side yard setbacks for the four manufactured home units respectively of 6.4'±, 7.3'±, 2.5'±, and 1.7'±.
2. A Variance from Section 10.334 to allow a lawful nonconforming use to be extended, enlarged or changed except in conformity with the Ordinance.

Mr. Mulligan resumed his voting seat. Mr. Formella returned to alternate status, and Mr. McDonnell assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

Andrew Nadeau of Horizons Engineering was present on behalf of the owner to speak to the petition. He gave a brief history of his company and said they were partnered with New Hampshire Community Loan Fund (ROCNH), who helped mobile home community residents take control of their property. He reviewed the history of Woodbury Cooperative and said that his company would help improve their living conditions and infrastructure. Mr. Nadeau said there was a total of 21 units on the property, including an apartment building with three units, a garage with a unit above it, and a cottage. He said they needed more density and proposed to demolish a few units and add four mobile units as well as more parking. He reviewed the criteria in detail and said they would be met.

Mr. Parrott said he visited the property and that it looked neglected, with junk everywhere. He asked who was responsible for keeping track of the existing property and whether anything Mr. Nadeau proposed would improve the conditions. Mr. Nadeau said that ROCNH empowered their communities but also held them accountable. He said community residents took on a new outlook when they were empowered. Mr. Parrott said that didn't answer his question and asked who was currently responsible for maintaining the area around each individual unit and the common area and whether it would improve if the variances were granted. He noted that the mobile community had been before the City previously and had made promises to improve the conditions, but the property's conditions hadn't improved much, if any. Mr. Nadeau said the cooperative was responsible and had a governing board that would be under the auspices of the ROCNH program. Mr. Parrott asked who was currently responsible. Mr. Nadeau said it was the community, individually and collectively. Mr. Parrot noted that it wasn't working.

Mr. Mulligan asked how long the cooperative had owned the property.

Leslie Williams said she had lived there for 22 years and that every individual was responsible for his or her own area and were taking more pride in their units because they were now owners.

She said that she was president of the board and that people were given notices and/or evicted when they didn't follow the rules.

Mr. Mulligan asked whether the cooperative took ownership over seven years ago. Ms. Williams said it was only one year ago. Mr. Mulligan said that was his point.

Mr. Mulligan noted that Mr. Nadeau was proposing to go from 19 units to 21 units. He said he was struck by the fact that, in addition to increasing the level of density, Mr. Nadeau was starting with a clean slate with the four new units. He asked why the new units were sited the way they were, noting that the setbacks could have been respected and that they could have been sited uniformly. He said the entire property suffered from random, scattershot development over the years and that the proposal looked like more of the same. Mr. Nadeau said they had to keep a few things in mind, like adequate access and two parking stalls for each unit. He said that the new units were placed in what they felt was a reasonable and aesthetic location for that size of a unit. He said there would be a setback violation if they pulled them significantly into the traffic area. Mr. Mulligan concluded that it was to basically maintain the two-way traffic aisle, and Mr. Nadeau agreed.

Mr. Lee asked whether the new units were all the same size, and Mr. Nadeau said they were.

Chairman Rheume said he agreed with Mr. Mulligan's concern. He said it looked like there were two parallel parking spots and asked whether the applicant needed six spots for the 3-unit apartment building. Mr. Nadeau agreed. Chairman Rheume said if there weren't those two spots, the aisleway could be moved a bit. He asked whether the second unit's tree drove the location because he felt that it could go closer to the aisleway. Mr. Nadeau said they wanted landscaping around the units, especially in the front of each unit.

Chairman Rheume said that a few units concerned him but it seemed like it could be the start of more significant change to the property and perhaps establish a pattern used throughout the property. Mr. Nadeau said they eventually wanted to replace units of people who moved out with new ones and improve and orient them. Chairman Rheume asked whether the community had the financial means to put new units in as old ones became obsolete. Mr. Nadeau said the ROCNH program was vested and financially involved, and they insisted that the community have long-term improvements.

Ms. Williams said they wanted to put slabs in for the mobile homes for existing sewage, water, and so on. Chairman Rheume verified that the community would make the investment of removing the outdated structure, adjusting the water and sewer connections, and put in a new slab for the site of a purchased mobile home. Ms. Williams agreed.

Chairman Rheume said he drove by the property and had no idea that there was a mobile park behind the front buildings. He said the project would change that dynamic by tearing down the garage and apartment, but also by tearing down the former store because the manufactured housing would be seen and it would change the nature of the neighborhood a bit. He asked whether the applicant considered converting the store to a residential use instead of the two new manufactured units. Ms. Williams said they were told that they couldn't open the store back up

as a business, so they thought it was out of the question. Mr. Nadeau added that the footprint and amount of space the store would occupy wouldn't equal the two units.

Vice-Chair LeMay asked Mr. Nadeau to elaborate on the ownership model. Mr. Nadeau explained that some people owned the land that the mobile home was on, but that they would own the new model's land as a cooperative and own the units individually. Vice-Chair LeMay said someone selling the unit would also sell their interest in the community. Ms. Williams agreed, noting that they would pay a \$200 membership fee and couldn't rent the unit out. She said the owner either had to sell the unit or remove it from the premises.

Mr. Moretti asked what was proposed for existing decks and sheds. Mr. Nadeau said they hadn't fully developed the site plan. He said they could provide screening on the front of the property but hadn't made provisions for sheds. Mr. Moretti said he was concerned that the applicant would return for approval for decks and sheds. He said everything should be inclusive. Mr. Nadeau said he thought the reason the decks and sheds weren't included was because they were factored into the density. Mr. Moretti said it should have come under the square footage calculation. Chairman Rheume agreed, saying the Board's concern was that if someone wanted to place a deck or anything above 18 inches within the required setback, they would have to go before the Board, but he said the typical manufactured home's main entrance was close to the structure and a secondary entrance might be 2/3 of the way back, so he thought they were okay. He noted that the front unit was close to the front property line setback, however. Mr. Nadeau said they wanted to move the second unit further away from the property line. Chair Rheume said the biggest concern was reasonable access for the owner to maintain the home without having to go on an adjacent property.

Mr. Parrott noted that the top two proposed new units as shown on the site improvements plan showed oil tanks, but the third one didn't show one or a gas connection, and the one closest to Woodbury Avenue seemed to show a gas connection. Mr. Nadeau said those were existing oil tanks on those two units. Mr. Parrott said the one close to the property line didn't allow room for an oil tank. Mr. Nadeau said they weren't at that level yet and that oil tanks would most likely go on the side. Mr. Parrott asked whether City gas service was currently in the compound, and Ms. Williams said there were no connections.

SPEAKING IN OPPOSITION TO THE PETITION

Tom Heaney of 30 Wholey Way said he abutted the back part of the property and had gone to the Planning Department with concerns about the density, noting that the setback issues were self-imposed. He said the City Planner told him that the property didn't have a survey done, that it was just a plot map showing existing conditions. He said he had a survey showing that the back property line abutted his property and that the stone wall was the actual property line, not the fence. He said he wanted a survey imposed because the Board might be approving something that was on someone else's land. He encouraged changing the site of the new buildings so that the variance issue would go away and also suggested screening the property.

John Guarneri of 44 Wholey way stated that the property had been a cooperative for the last year, yet he hadn't seen any changes and there were still issues. He feared that additional units would cause more issues and alluded to the fact that the police had been to the property several times.

Robin Alto of 30 Wholey Way said she notified the management company that they were planting on her land outside the fence, but no one reached out to her about her concerns with the setback and increased landscaping. She also said they removed most of the trees on the property, so she wasn't sure that their landscaping intent was a viable one.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Nadeau stated that the property was surveyed and that he had the survey available. He said that the stone wall wasn't on the boundary line and that the issue had to do with the deed. He emphasized that the property had been certified.

Ms. Williams said they removed one rotten tree and had branches removed from other trees.

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

DECISION OF THE BOARD

Mr. Mulligan said there were two variances before the Board and said he could get behind the variance to allow additional density because he had done a lot of work with cooperatives and found it a difficult thing to get one's arms around a community and take control of it. He said the property had two arms behind its back because it was so small and haphazardly developed over time, so allowing appropriate upgrades and getting new units would increase the viability and enhance its potential for success going forward. He said he could therefore support the density variance. He said he couldn't see why the setback variance couldn't be turned around. He knew it had to go through site review, but he felt that if the applicant was going to start with a clean slate, he should be able to do something about those setbacks, so he could not support the setback variance.

Vice-Chair LeMay said it appeared that there might be a way with the traffic aisle, with parallel parking spaces alongside the apartments, that could be used to provide some give on the sideline variance. He said it was very tight in the front corner. Mr. Parrott said he agreed about the density and placement of the units and being too close to the sidelines. He said the traffic aisle width was more than the City required, and it seemed that if some of the units could be turned slightly so that they were parallel to each other, they could be pulled very close if not to the sideline setbacks. He said that additional engineering and design could benefit the issue and might get the applicant out of a need for a sideline setback, but he couldn't agree with the sideline setbacks as proposed.

Chairman Rheaume said he thought the project had the potential to be the start of something good and thought it was a good first step for doing something positive for the park and eventually for the neighborhood, but he felt that the nature of what was going on called for something better. He said the density was just about even but tight, and the Board was granting a

lot of relief, but in terms of a livable space or extending the density through the park, he thought the park would be decent in density and not overly crowded yet still maintain enough units for a vibrancy and the financial potential to manage the units. He said he didn't like what was being proposed for the setbacks but was willing to give some setback relief, perhaps 7-1/2 feet or a 25% encroachment if it was necessary to make the numbers work for a reasonable entry and exit. He said the applicant was doing a lot to improve the nature of the park, part of which was not to overcrowd it. He said his last concern was that the project would change the appearance of the park in terms of how it was presented to the street, but he also noted that there were other commercial businesses in the area, so the concern wasn't enough to prevent the applicant from having manufactured homes that close to the front of the property. He said he could support the density and a setback of a maximum of 7-1/2 feet from the property line or 25% encroachment.

Vice-Chair LeMay said he would not support giving just a number for a setback.

*Mr. Mulligan moved to **grant** Item 1(a) and Item 2 of the petition as presented and advertised, noting that the setback relief requested in Item 1(b) could not be granted. Mr. Parrott seconded.*

Mr. Mulligan said that granting the variances would not be contrary to the public interest and the spirit of the Ordinance would be observed. As represented the proposal would result in a total of 21 units, where 19 or 20 units currently existed, so the essential character of the neighborhood would not be altered from a density perspective. He said granting the variances would do substantial justice because the existing long-time density was higher than required, so that strictly enforcing the Ordinance and denying the application would result in a loss to the applicant, with no corresponding benefit to the general public. He said granting the variance would not diminish the value of surrounding properties because some dilapidated structures would be replaced with new homes and would enhance the value of the property, which should also carry over to the values of surrounding properties. He said literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property. He said the property had been developed in a random fashion over the years, resulting in a higher than allowed density, and what was proposed would result in a small net change from the existing density, so that there would be no fair and substantial relationship between the purpose of the lot area per dwelling unit requirement and its application to that particular property. He said that replacing residential units with residential units was a reasonable use of the property.

Mr. Parrott said he concurred with Mr. Mulligan and added that the replacement of some tumble-down structures with new ones would be an upgrade, and the density change was very small, so it was reasonable in that regard.

*The motion **passed** by unanimous vote (7-0).*

9) Case 9-9.

Petitioner: Benjamin A. Solomon
Property: 38 Summit Avenue
Assessor Plan: 230, Lot 2
Zoning District: Single Residence B

- Description: Add two front window dormers
- 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 a front yard setback of 18' ± where 30' is required.
 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Mr. McDonell resumed his alternate status and Mr. Formella assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

The owner and applicant Ben Solomon was present to speak to the petition and stated that he wanted to add two dormers to increase the livability of the two upstairs bedrooms. He reviewed the criteria and said they would be met.

In response to the Board's questions, Mr. Solomon said there a total of 1100 square feet of living space in the house, that it was never a two-family home, and that he shared a driveway with the house next door. He said the primary house was steam-heated from an oil burner and that there was an installed electric heater in the upstairs portion that they wouldn't use. He said the dormers were 4' wide by 6' tall.

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

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

Mr. Moretti stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the applicant requested a set of dormers on his roof and wouldn't modify or move the structure at all, or change the setbacks, or encroach on anything else. He said that substantial justice would be done because the applicant would get to use the upstairs of his house and enjoy the property as well as improve the upstairs living space. Granting the variances would not diminish the value of surrounding properties because the owner was making an improvement to his property, bringing everything up to code like the heating system and so on. He said it would improve his property as well as properties around him. Mr. Moretti noted that the applicant lived in a house that encroached on some lot lines and that the dormers triggered the variance, so the hardship was that he couldn't put the dormers on without coming before the Board.

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

The motion passed by unanimous vote (7-0).

10) Case 9-10.

Petitioner: 143 Daniel Street LLC

Property: 135-143 Daniel Street

Assessor Plan: 105, Lot 9

Zoning Districts: Character District 4, Character District 5 and Downtown Overlay

Description: Create additional underground parking space.

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

1. Variances from Section 10.1114.20 to allow the following: (a) an 8'± x 16'± parking space where an 8½' x 19' space is required; and b) a 16'± wide travel aisle where a 24' wide travel aisle is required.

DECISION OF THE BOARD

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

11) Case 9-11.

Petitioner: Ethel V. Ross Trust

Property: 142 Mill Pond Way

Assessor Plan: 140, Lot 20

Zoning District: General Residence A

Description: Construct three townhouses.

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

1. A Special Exception under Section 10.440, Use # 1.51 to allow three dwelling units on a lot where they are only allowed by special exception.

Mr. McDonnell assumed a voting seat, and Mr. Formella returned to alternate status.

SPEAKING IN FAVOR OF THE PETITION

The owner Joe Caldarola was present to speak to the petition. He briefly reviewed the history of the property and the site plan, noting that his property was smaller than the one across the street. He reviewed the special exception criteria and said they would be met.

Attorney Bernie Pelech said he was present on behalf of Mr. Caldarola. He stated that the project met all the requirements relating to lot area, lot area per dwelling, and so on. He said they needed the special exception because it was a 3-unit townhouse. He emphasized that there was hardly any traffic and that the access from Mill Pond Way directly to the property wouldn't

affect anyone, and that no traffic would be added that would impede or increase traffic on nearby private ways. He reviewed the special exception criteria and said it would be met. He also noted that storm water runoff would be no greater due to three potential rain gardens and that it had to go through site plan approval.

SPEAKING IN OPPOSITION TO THE PETITION

Albert Lincoln of 141 Mill Pond Way said he owned a unit that looked out onto a wooded area and was told when he bought his unit that the lot was unbuildable. He said the design seemed dense and that the other large buildings were surrounded by green space. He said that people parked their cars on the nearby public roads and created congestion. He said a less dense development would allow more buffering, with less effect on storm water and traffic.

Heather Parker of 101 Mill Pond Way said she was concerned about how far the buildings were from the highest observable tide and whether it conflicted with the wetlands protection ordinance. She said the project could violate State law by being within the buffer zone.

Joe Famularo of 141 Mill Pond Way said he was concerned about traffic and the increased number of cars that would be parked on the property, the lack of a propane tank on the drawings, property value diminishment, and lack of privacy. He also said he was told when he bought his unit that the applicant's property would never be developed.

Lea Berry of 162 Mill Pond Way said she was concerned that a building that size would cause storm water runoff and was also concerned about parking issues.

John Tommasini of 162 Mill Pond Way stated that all twelve of the owners were told that the lot would never be developed. He said three additional units would be too much mass and that the small frontage would make for an awkward angle on a shared driveway.

Mitch Ciani of 60 Mill Pond Way said he learned that the property was grandfathered to allow development but felt that it didn't comply with the minimum street frontage. He also felt that the wetland setback zoning requirements would be infringed upon and referred to the Old Port Properties, who was allowed to build in phases.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech said he knew about the Old Port development and that he originally opposed it but then supported it because City planners told him that the lot was buildable. He said that, since 1966, if a lot had less than required footage, the fact that it didn't comply was inconsequential. He said the property met all the zoning requirements and that the special exception was allowed by the Ordinance. He noted that there was 50 feet of frontage, not 20, and that people had a right to park there. He said the propane would be dealt with at site plan review and would most likely be screened. He said the proposed buildings were not as close to the wetlands as the other units and that they would go before the Planning Board. He said the Planning Department never said that the property was unbuildable, that they said just the

opposite, which was the reason the 2007 plan was generated. He said the three additional units were never built because the property owner passed away.

Mr. Caldarola spoke to the environmental concerns, stating that very little of the property was involved in the 100-ft setback and that they would apply for the State Shoreland Buffer Permit.

Chairman Rheume asked Mr. Stith about how the Planning Department regarded the buildability of the lot. Mr. Stith said it fell into Section 10.312.10 and was shown on a recorded plan prior to March 31, 1966. Chairman Rheume asked whether the Planning Department had ever discussed the property's history or a change in the property. Mr. Stith said he wasn't aware of any discussion as far back as 3-4 years.

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

DECISION OF THE BOARD

The Board reviewed the Ordinance. Chairman Rheume said the GRA was permitted by rights and that a townhouse was a special exception as well as multi-dwellings. He said the street frontage was there and that 100 feet was required in the District, but that section of the Ordinance didn't have to comply with the street frontage due to the fine print. He said they were talking about one additional unit that was allowed by right.

Mr. Parrott referred to the widespread belief that the property wasn't developable and wondered whether the developer had provided definitive proof to the Planning Department of an earlier recording that satisfied the special exception requirement. Mr. Stith said the owner met with him and the Planning Director and had documentation as evidence that it was recorded. Mr. Parrott said he vaguely remembered that the property wasn't developable due to wetland concerns, and he felt that there was a lot of validity to those concerns because it was such an unusual area due to its location and strange road structure, which were two reasons he felt it hadn't been developed for a long time.

Mr. Moretti said he thought the property wasn't developed because people overlooked the 1966 statement. He said the Board was considering a special exception and there were some hitches, such as the traffic, but there was no study because it was a private road. He said that three additional residential units were not unusual to be added to a public street and that additional traffic would be seen but was expected due to the way Portsmouth was growing. He said there would be the same amount of storm water runoff whether there was a building or not.

Chairman Rheume said he was torn because it seemed like an odd lot and the Board had similar circumstances previously concerning a portion of a paper street. He said that, in some cases it made sense, and in others it didn't, but in the applicant's case, from a driveway standpoint, trying to add a third driveway at an odd angle was an odd and confusing arrangement and that ideally there would be a circle at the end of it. As for water runoff, he said the Planning Board was the expert on that issue, but he didn't see an obvious concern. He noted that the Planning Board would also consider the wetlands concern, so the issue came down to the property values and character of the neighborhood. He said it was tough to say that one couldn't put a multitude of

three units when all the surrounding properties had similar units, even though the structure was a bit different. He said the traffic and parking issues were worked through before, and he didn't see that three additional homes with one or two vehicles would really change that dynamic so grossly that it failed in that criteria. He said the zoning allowed the proposed development and that, although it was an awkward layout, it met the special exception criteria.

Vice-Chair LeMay said that, given what the applicant could do by right, which was to add two units that could be as big as or bigger than what was proposed. Instead the applicant was proposing to add one unit to 14 or 15 units, and he thought it was hard to say that it would have an impact, given the criteria. He said the wetlands issue was true whether there were three or two units, and given that it was a special exception, he thought the Board would find that the applicant met the requirements and there was little discretion.

*Mr. Moretti moved to **grant** the special exception for the petition as presented and advertised, and Vice-Chair LeMay seconded.*

Mr. Moretti said that granting the special exception would pose no hazard to the public or adjacent properties on account of potential toxic materials, explosives or potential fire because the Board had not heard that that would be the case. He said it would pose no detriment to property values in the vicinity or changes to the essential characteristics of the area because it didn't seem like it would be different from surrounding properties – it was a modern building with modern buildings surrounding it, and he couldn't see how it would impact property values. He noted that the neighbors were concerned about whether the lot was buildable and were also promised a view of the forested area, but he said the applicant had the right to develop the property in whatever manner he chose. He said granting the special exception would cause no creation of traffic and safety hazards or potential increase to the level of traffic because the applicant was only asking for one additional unit and perhaps two additional cars, with no massive increase in traffic density, given that the owner could develop it into two large properties if he wanted to. He said there would be no demand on municipal services including water, sewer, waste, police and fire protection, schools, and so on because the owner was asking for one additional piece of property where he was allowed two, for a total of three buildings. Granting the special exception would pose no increase in storm water runoff because the property had been recently tested for storm water runoff increase, and plans showed rain gardens and other ways of mitigating the runoff. For those reasons, Mr. Moretti thought that the special exception should be granted.

Vice-Chair LeMay concurred with Mr. Moretti and noted that the applicant indicated that the buildings would have sprinklers as well, and that unresolved water runoff issues could be addressed at the site plan review.

Chairman Rheume said he would support the petition for obvious reasons. He noted that an abutter mentioned a propane tank and whether it would be a source of potential fire, but he said that there were codes requiring protection and that it would be reviewed at the site plan and that the risk would be mitigated to an acceptable level.

*The motion **passed** by unanimous vote (7-0).*

V. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 10:00 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary