

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

7:00 P.M.

MARCH 20, 2018

MEMBERS PRESENT: Chairman David Rheume, Vice-Chairman Jeremiah Johnson, Patrick Moretti, Arthur Parrott, Jim Lee, Peter McDonell, Alternate Phyllis Eldridge

MEMBERS EXCUSED: Christopher Mulligan, Alternate John Formella

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheume welcomed Mr. Moretti back for one final meeting. He also introduced and welcomed the new alternate, Phyllis Eldridge.

I. APPROVAL OF MINUTES

A) February 21, 2018

ACTION OF THE BOARD:

*It was moved, seconded, and passed by unanimous vote (7-0) to **approve** the February 21, 2018 minutes with minor amendments.*

B) February 27, 2018

ACTION OF THE BOARD:

*It was moved, seconded, and passed by unanimous vote (7-0) to **approve** the February 27, 2018 minutes as submitted.*

Chairman Rheume stated that there was an issue regarding Case 3-5, 89 Brewery Lane. He read the petition into the record and noted that there was an error made by the Planning Department in listing a variance that was not part of the original advertisement. He asked the Board for a motion to take the case out of order so that they could consider it.

*It was moved, seconded, and **passed** by unanimous vote (7-0) to take the petition out of order.*

The Board then discussed it. Vice-Chair Johnson noted that a previous Maplewood Avenue project brought up concerns about notifications to abutters. Chairman Rheume asked whether it constituted a serious-enough issue that would cause the Board not to hear the petition that evening and to re-advertise it so that the public could understand the full scope. Mr. Moretti said he believed that it was a substantial difference from what was advertised and felt that it should be re-advertised so the public could see that it was substantial. Mr. Parrott agreed. Chairman Rheume said that it did seem like a significant difference, but on the other hand, it was sort of a whole new section of the character-based zoning. He said the maximum 2500 square-foot requirement was kind of obtuse. He said it was also a project that had come before the Board before, so the public knew about it. He said he was okay with letting the petition move forward but also noted that there was a lot of consternation from the public the previous month about a case that wasn't properly advertised.

*Mr. Moretti moved to **postpone** the petition to the April meeting and so that the petition could be re-advertised. Vice-Chair Johnson seconded the motion. The motion passed by a vote of 6-1, with Chairman Rheume voting in opposition.*

II. PUBLIC HEARINGS – OLD BUSINESS

A) Case 2-10

Petitioner: Richard Fusegni
 Property: 201 Kearsarge Way
 Assessor Plan: Map 218, Lot 5
 Zoning District: Single Residence B
 Description: Subdivide one lot into two.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a lot area and lot area per dwelling unit of 7,834± s.f. where 15,000 s.f. is required;
 (*This petition was postponed from the February 27, 2018 meeting.*)

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant to speak to the petition. He reviewed the history of the lot. He reviewed the criteria and said they would be met. He distributed copies of a petition signed by the abutters and neighbors in favor of the petition.

Chairman Rheume said it seemed that the project needed the prior variance that was granted for the 15 feet from Mangrove Street. Attorney Pelech agreed, saying they would need it to construct the single-family home. Mr. Stith verified that the previous relief granted was still applicable.

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

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

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **grant** the variance for the petition as presented and advertised, and Ms. Eldridge seconded.*

Vice-Chair Johnson said the request was straightforward. He said the numbers seemed drastic, but from a neighborhood perspective, the outcome would end up with less density. He said the proximity of the new building may be a bit closer to the main abutter but noted that the abutter signed the petition, so he didn't think they had much of a problem. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because it was a residential neighborhood and a very large lot that was much larger than most surrounding lots. He said that one residence added to that neighborhood would not alter its character or pose a threat to the health, safety, and welfare of the public and neighbors. He said substantial justice would be done because the benefit to the applicant to alter what had already been approved essentially lessened the end result benefit, and having two lot subdivisions instead of three didn't tip the scales to the public. He said granting the variance would not diminish the value of surrounding properties because it was a tasteful development that wasn't too dense and one that could add value to surrounding properties. He said the hardship was that the lot was on a corner that surrounded another adjacent lot and had an unusual shape, and the owners on two sides were inset from the edge of the pavement, so even though the density number was substantial, by being on a corner lot and with the inset boundary lines, the property seemed to be even larger than indicated on paper. He said the lot's shape, size, and proximity to other properties were the hardship, and the use was a reasonable one and that he approved it.

Ms. Eldridge said she concurred with Vice-Chair Johnson and thought the new lot was very much in keeping with the neighborhood.

Chairman Rheume said he would support the petition. He agreed that it was fairly substantial relief, but when one looked at what was previously approved, he noted that even though the lot technically met the requirements for total square footage, a lot of that footage was not practical for use for the dwelling unit. He said the home wasn't really different from what the Board approved a few years before. He said the proposed subdivision would have nice straight lines and thought the fact that the applicant wanted to preserve the home was a positive.

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

B) Case 2-11

Petitioner: Cyrus Lawrence Gardner Beer
 Property: 64 Mt. Vernon Street
 Assessor Plan: Map 111, Lot 30
 Zoning District: General Residence B
 Description: Chicken coop with six chickens (hens).
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals where the use is not allowed.
2. A Variance from Section 10.573.10 to allow an accessory structure 3'± from the rear property line where 5' is required.
(*This petition was postponed from the February 27, 2018 meeting.*)

SPEAKING IN FAVOR OF THE PETITION

The applicant Cyrus Beer was present to speak to the petition. He noted that he would place the chicken coop close to the property line, explaining that there was a concrete wall on one side of the property and a parking lot on the other. He said that, by building the coop closer to the wall, the nearby residents would not notice the difference. He said his neighbors were in favor of the coop. He asked the Board to refer to the criteria review that he had presented in writing.

In response to Mr. Moretti's questions, Mr. Beer said the chicks would be in a 8'x4' fenced area and that there would be no roosters.

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

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

DECISION OF THE BOARD

*Mr. Moretti moved to **grant** the variances for the petition as presented and advertised, with the following stipulation:*

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

Mr. Lee seconded the motion.

Mr. Moretti stated that granting the variances would not alter the essential character of the neighborhood because a chicken coop seemed to be a common request in the City that was heard on a case-by-case basis, and it would pose no threat to the public's health, safety, and welfare. He said the applicant would hide the coop from the public using a cement wall, and that he would also contain the chickens by using a fence. He said granting the variances would not be contrary to the public interest because the public had not spoken against it and the neighbors were in support of the project. He said the spirit of the ordinance would be observed because a coop was a common occurrence, and the surrounding neighborhoods had chicken coops. As far as a hardship, Mr. Moretti said that a chicken coop was a common request in similar neighborhoods, and the hardship would be on the applicant if he couldn't have chickens.

Mr. Lee concurred with Mr. Moretti and noted that if the price of eggs kept going up, he would have to get his own chicken coop.

Chairman Rheume said he would support the motion. He noted that he normally wouldn't be in favor of placing the coop three feet from the property line but realized that the wall backed up against City property on one side and City Hall on the opposite side, so it was a unique case.

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

III. PUBLIC HEARINGS - NEW BUSINESS

1) Case 3-1

Petitioner: Giri Dover LLC
Property: 99 Durgin Lane
Assessor Plan: Map 239, Lot 15
Zoning District: Gateway Mixed Use Corridor
Description: Install an LED light band under cornice roof line.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1271 to allow signage where it is not allowed;
2. A Variance from 10.1251.10 to allow signage where there is no aggregate signage available;
3. A Variance from Section 10.1251.20 to allow canopy signs greater than 20 s.f.;
4. A Variance from Section 10.1251.20 to allow a wall sign greater than 200 s.f.; and,
4. A Variance from Section 10.1242 to allow more than one wall sign above the first floor on three sides of the building without a street façade.

SPEAKING IN FAVOR OF THE PETITION

Phil Naffah of Harvey Signs was present to speak to the petition on behalf of the applicant. He noted that the wall sign request was removed from the petition and that they were requesting approval only for the lighting. He showed a prototype to the Board and said it was designed with the exact building code, same texture, and same paint. He emphasized that the light fixture would be below the cornice and practically invisible, would provide more ambient light to the parking lot, would not obstruct the public or businesses, and would shine toward the top of the building. He noted that he had addressed the criteria in written form.

In response to questions from Mr. Parrott, Mr. Naffah said the light box would be 11 inches below the cornice and that they were requesting an area of 550 square feet. Mr. Parrott commented that the calculations weren't shown on the drawing and that normally relief from a numerical requirement was indicated by the applicant. He said the applicant was already over the allowance. Mr. Naffah said there was an amount allowed for the elevation of the building with a frontage, but his building didn't face a road frontage. Mr. Stith confirmed that the applicant didn't have any aggregate. It was further discussed.

Chairman Rheume noted that the property was difficult to find. He asked why there would be two levels of lighting, one on the porte cochere and one on the upper level going around the top of the building. He said he thought it was a substantial amount of light to be on the very top of the building and wondered how it would establish the brand. Mr. Naffah said it would bring all the locations together and that his client hoped to develop that look for all their buildings. He noted that the lighting would be minimal and blend it so well that it wouldn't be noticed.

Chairman Rheume said the Board had to look at the big picture and whether it was something they wanted in the City. He asked whether the applicant had done similar lighting at the other locations. Mr. Naffah said they had and that it was a national branding campaign. Chairman Rheume asked whether the company had identified concerns with the Portsmouth location of people not being able to find the hotel, and whether the client would make it more accessible. Mr. Naffah said the lighting would make the hotel more presentable from the highway and draw in more business.

Mr. McDonell noted that the site plan referred to how safety would be increased in the parking lot, and he asked how much ambient lighting would be emitted. Mr. Naffah said it would give off two nits per square meter and would make the parking lot more visible and more secure.

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

The Board discussed the petition further. Vice-Chair Johnson said he understood why the ordinance qualified the light as a sign and said he would describe it as a light wash against the cornice line giving off a glow. He said he had no problem with it. He said the light wouldn't change blink, scroll, or grow in intensity but would be static surrounding by large box buildings and not visible from any residential neighborhoods. He also noted that the building was difficult to find, so he could understand the purpose of the proposed lighting. Mr. Lee agreed. Mr. Moretti noted that the band light was seen on a lot of commercial buildings in large cities, and he thought it added character to a building. Mr. McDonell said he was initially concerned about how much light would be given off and what the surrounding area would look like, but he didn't think it would make a substantial increase in the ambient light in the area. Mr. Parrott said he could support it because of its unusual location and surroundings.

Chairman Rheume said he was torn. He was in favor of the porte cochere because it was very dark in that area and tough to find, and he liked the welcome sign because it identified the entrance. He said he wasn't as convinced about lighting at the top of the building and would be hesitant if the building were anywhere else. He said it wasn't something that the Board wanted to encourage, but he felt that it was appropriate for that particular application. He also noted that the lighting would add some architectural interest to the building at night.

*Vice-Chair Johnson moved to **grant** the variances as presented, and Mr. McDonell seconded.*

Vice-Chair Johnson stated that he would incorporate his earlier comments into the record. He said granting the variances would not be contrary to the public interest because the character of that neighborhood was varied in nature but not residential. He said it wouldn't enhance the density of that location. He agreed that the porte cochere's lighting would help in making the entry area safer and that the cornice lighting wouldn't have much effect on the parking lot, and that it wouldn't affect the health, safety, and welfare of the public. He said granting the variances would do substantial justice because the scales wouldn't tip in the public's favor any more than the applicant's, and it would be beneficial to the applicant to display their standard brand. He said the value of surrounding properties would not be diminished because the building was sort of on an island, with really no continuity or aesthetic cohesiveness. He said the hardship was the property's location and the proximity of its access point, and the lighting would be a beacon to it. He said he didn't know whether it would help anyone trying to find the property, but he noted that the property was up against a major highway, with people driving in and out of town who might not be familiar with the area, and that the sign might indicate that the hotel was there.

Mr. McDonell concurred with Vice-Chair Johnson and agreed that the hardship was the location, which distinguished the property from a downtown location or other locations, and that it would be beneficial to the applicant. He said it was clear that it would not establish some kind of precedent, like a downtown applicant asking for the same relief under the same guise.

Ms. Eldridge said she felt that, when the Board approved something, it was for something concrete. She noted that the photo indicated a very soft, mellow light, and she asked what control the Board would have if the lighting was installed and was a startling light. Chairman Rheame said the Planning Department tried to ensure that the result stayed close to what was presented. Mr. McDonell said it was made clear that the light would be a solid white light, and he referred to the applicant's statement that the lighting would be two nits. Mr. Stith said there were standards for nits in the ordinance that the applicant would have to comply with.

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

2) Case 3-2

Petitioner: Cape Elizabeth Moss GST Exempt Trust F/B/O Keith Mariah Heriot
 Property: 18 Monroe Street
 Assessor Plan: Map 151, Lot 7
 Zoning District: General Residence A District
 Description: Replace existing two-story left-side addition.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a 5'10"± left side yard and a 5'11"± right side yard where 10' is required for each;
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.

SPEAKING IN FAVOR OF THE PETITION

Amy Dutton was present on behalf of the applicant. She gave the Board copies of an abutter's letter and of the site plan. Ms. Dutton reviewed the petition, emphasizing that the home would be kept as a single-family residence and that the addition would be connected to the house and the garage. She reviewed the criteria and said they would be met.

Chairman Rheaume asked whether the benefit was that the stairway inside the garage would start in the back of the entry and go up to the second floor of the garage. Ms. Dutton agreed. In response to further questions from Chairman Rheaume, she said that there was no access from the second floor of the home into the garage, that the space was intended for storage, and that the garage itself would not be changed. Chairman Rheaume verified that the applicant wasn't adding anything to the right-yard setback and that the garage wouldn't change from the abutter's standpoint other than being connected to the principal structure. He also noted that the fence line went into the neighbor's property, and it was discussed. Mr. Moretti noted that, by placing the bulkhead on a particular side, there wouldn't be a lot of room to get around it. Ms. Dutton said the bulkhead was 18 inches high and would provide enough room, even though it would be tight.

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

Mr. McDonell said that, at first, it might look like a large amount of relief, but it really wasn't. He said they were talking about filling in the middle space between the house and the garage and adding a little bit on the back, so even though it was a substantial addition, it wasn't really as substantial vis-à-vis the variance request. He said the request relief was really no different from what currently existed, and in some cases, probably better.

Mr. McDonell said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because he thought there was no conflict with any purpose of the ordinance and he didn't see how it would alter the essential character of the neighborhood or pose a threat to the public's health, safety, and welfare. He said he was initially concerned because it looked like it would be a massive structure, but he didn't see any injury to the neighbors because of it. He said granting the variances would do substantial justice because the applicant would get a large benefit from the substantial addition to their house without really harming the general public or neighbors. He said the value of surrounding properties wouldn't be diminished. He noted that the Board hadn't received any testimony saying that the properties could be affected, and that he saw no evidence of such. He said it was a tasteful addition and renovation. Mr. McDonell said the hardship was due to the special conditions of the property that distinguished it from others in the area, including the water issues in the back corner of the house which could be damaging, and the issues with the grade of the house and wanting to stop using

so much usable space that could be stairs instead. He said he thought those were reasonable requests and felt that there was no fair and substantial relationship between the general purposes of the ordinance and the setback requirements and their specific application to the property. He said the proposed use for an addition was a reasonable one.

Mr. Lee concurred with Mr. McDonell and had nothing to add.

Chairman Rheume said he would support the motion. He said that most of the addition would be allowed by right, even though it at first seemed imposing. He noted that the garage was previously granted variances to be in its present location. He said there was the technical consideration that the garage would become part of the principal structure, so the setback could be re-examined by the Board, but he felt that the Board had good reasons to previously approve it and that those reasons still stood. He said the applicant was making a fair attempt to remove the most offensive portion of the back of the house and giving it some relief. He said the bulkhead would be a low-lying structure and noted that the applicant was keeping everything along the main line and doing the right thing by the neighbors.

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

Vice-Chair Johnson recused himself from the petition.

3) Case 3-3

Petitioner: LGSG, LLC
 Property: 160 and 168-170 Union Street
 Assessor Plan: Map 135, Lots 29 and 30
 Zoning District: General Residence C District
 Description: Merge two lots into one with four dwelling units.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including Variances from Section 10.521 to allow the following:

1. A lot area per dwelling unit of 2,363± s.f. where 3,500 s.f. is required;
2. A right side yard setback of 5'± where 10' is required;
3. A left side yard setback of 5'4"± where 10' is required; and
4. A rear yard setback of 8'6"± where 20' is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bosen was present on behalf of the applicant to speak to the petition. He introduced the owners and the project architect Mark Gianniny and noted that it was their third attempt in presenting their petition. He reviewed the petition's history, noting that the buildings and density had decreased with each attempt to what resulted in a very modest proposal. He emphasized that the property was in deplorable condition and had much hardship. He said the property would be more conforming and have a 4-car garage to keep parking on site. He reviewed the criteria, explaining in detail how they would be met.

Chairman Rheume noted that the Board had not received the floor plans for the duplex, and he asked whether it was two 2-story units and would remain so. Attorney Bosen agreed. He said the vertical expansion would increase the ceiling height on the second floor, and that the added dormers would give the unit more height but not be living space.

Mr. Gianniny said they did not plan on putting dormers on the existing structure but were just requesting vertical expansion on the back. He said it would add about 6-1/2 inches to the ridgeline. He said the intent was to keep the left-side porch and the odd addition on the back end and to eliminate the porch and the similarly-odd little addition on the back. Chairman Rheume asked where the dividing line was. Mr. Gianniny said the dividing wall was down the middle.

Chairman Rheume asked why Unit B would get the garage parking, when the back door led to Unit A, and the two parking spots for Unit A were in the driveway, forcing the tenants to go all the way across to get to their unit's entrance. Mr. Gianniny agreed that it was odd and said it could be switched.

Chairman Rheume noted that the porch was barely encroaching into the setback on one side and that the new structure going further up looked like it might be six inches into the setback. Mr. Gianniny agreed and said that it was also to align with the existing walls beside that porch

SPEAKING IN OPPOSITION TO THE PETITION

Roland Cote of 188 Union Street said he lived next to a direct abutter. He told the Board that the definition of hardship was that the applicant must establish that the property was burdened by the zoning restrictions in a manner from similar properties. He quoted comments made by Board members during the applicant's previous two presentations, in which some Board members stated that they didn't see hardship. He told the Board that they had to be consistent.

Janet Morley of 188 Union Street said she concurred with Mr. Cote regarding the lack of hardship and noted that the setbacks were closer to abutting properties.

Elyse Hambacher of 220 Union Street said she also owned the property at 274 Austin Street that abutted the 160 Union Street property. She said she petition did not pass the hardship test. She gave the Board a handout describing the difference between a project at 226 Union Street and the applicant's project, noting that there was no significant difference between the two lots. She said the applicant was capable of building a structure that did not require the variances he was seeking and that there was no special condition distinguishing the property from others.

SPEAKING TO, FOR, OR AGAINST THE PETITION

James Beland of 373 Union Street said there were different degrees of hardship. He noted that the project would remove eight parking spots from the street. He said that he saw a hardship caused by the existing dilapidated building. He asked that the petition be granted.

The applicant Natasha Goyette said she received a lot of support from several neighbors, even though there was contention in the neighborhood about the project. She said they tried to address all the neighbors' concerns.

Attorney Bosen noted that the room was packed with opposition at their two prior meetings, unlike that evening, and felt that the opposition's concerns were not consistent. He said the congestion and parking issues were resolved, but the opponents were hanging on to a definition of hardship that one of the Board members may have said in response to a prior application. He said the lot had non-conforming structures and was surrounded by setback restrictions. He said the owners spent a lot of time and money to get the project right by reducing the congestion, and so on. He said the four units were permitted by right and that the project promoted what was good for the neighborhood. He said they had gone out of their way to meet the criteria and hoped that the Board would keep that in mind.

Roland Cote of 188 Union Street said he did not make up the definition of hardship and that the Board had to decide whether they would follow the strict definition of hardship or blow it up.

Janet Morley of 188 Union Street said she had many concerns but felt that one could not get past the hardship criteria. She said the project had a lot of density in a small area, even though four units were allowed by special exception. She said there wasn't a large public turnout because the notification was received only a week before.

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

DECISION OF THE BOARD

The Board discussed the petition. Mr. McDonell said he couldn't remember what he had said at the previous two meetings about hardship but thought that whether or not a hardship existed was dependent on what relief was being requested. He felt that someone requesting setback relief for something had a hardship, even if one thought that someone requesting hardship for some other relief, like lot area per dwelling unit, did not. He said the question of hardship was self-evidently dependent on what relief was being requested. He said the dimensions of the two lots did look similar to others in the area, but that the distinguishing characteristic was that it would still require relief, at least on one side. He said that if one looked at that lot in conjunction with the other lot and said they were trying to make a relatively narrow house at 160 Union Street while still giving a driveway area between the two buildings in front, he could understand why the property had special conditions and the requested use was reasonable, and he thought there would be a hardship if it wasn't allowed. He noted that the primary concern of the opponents was hardship, and he didn't think it was fair of them to cite what Board members had said in a previous meeting about the same property but with a different request for relief. He said they were not talking apples to apples.

Mr. Moretti said the density had gotten less each time the applicant went before the Board. He noted that he was one of the members who proposed denial at the second meeting because he thought the greenspace on the property was minimal, there were traffic issues, and the density

was high. He said the Board was supposed to address each petition *de facto* and address the hardship as something completely new and not bring the previous ones forward.

Chairman Rheume said he thought the Board was disappointed with the applicant's first two attempts. He said if the applicant had started closer to where they now were, the opposition might have been less, and he felt that the third attempt was more in keeping with the streetscape of the neighborhood and the infill in the back of the property. He said that, relative to the opponents' take on the hardship criteria, there were two prongs, in that the property had special conditions that distinguished it from others in the area. He said that any type of renovation to the duplex would require relief, and if they were to rebuild or use the existing foundation for the other structure or enhance upon it, that would also require relief, so he believed there were special conditions. He said the second prong that the Board had to consider was whether a fair and substantial relationship did not exist between the general public's purpose of the ordinance and the specific application of that provision of the proposal, and whether the proposed use was a reasonable one, which gave the Board more of a balancing test. He said the public was getting something back from the proposal by the applicant making it into one lot, allowing the driveway to have more usable parking, adding a fourth unit but also providing parking for it, and putting it into a structure that was relatively modest. He said the applicant finally made a good-faith effort to make something that conformed to the overall character of the neighborhood and felt that it met the criteria. He said he could accept the proposal.

Mr. Parrott said he agreed and thought it was a step in the right direction, but for him, the proposal still didn't get there because it was an opportunity to get into full compliance, or at least closer compliance. He said that a lot of setback relief was still being requested – 3500 s.f. was required per unit, and the applicant was asking for 2,300 s.f. He noted that the back building had a setback of 8'6" where 20 feet was required and that 20 feet wasn't very much for light, air, and other good reasons for open space on the lot. He said the dilapidated barn should have been removed long ago, so that was almost irrelevant, but that it would have been substantially into the required setback. He said the hardship was black and white and that the Board was obligated to follow the hardship criteria. He said the baseline condition under the ordinance talked about special conditions of the new property distinguishing it from others in the area, and then it considered the specifics. He said the street had not changed, and there was a line-up of lots that weren't different from the applicant's lot and did not have large buildings, like a 4-car garage with an apartment on top of it, set near the back property line. He said that both properties could be redeveloped much closer in conformance with the ordinance's requirements, perhaps with a lot line change. He concluded that, even though the petition was better than the previous two, it still did not satisfy the Board's requirements, and he could not approve it.

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

Mr. McDonell said that he was not considering the earlier applications in making the motion and that it was clear that the current application was better. He said it was reasonable for the Board to look at the current application on its merits, and he thought that the proposal was a reasonable request that met all the criteria. Mr. McDonell said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the relief being

requested was for the right side-yard, left side-yard, and rear yard setbacks per lot area per dwelling unit, and he thought the request was reasonable and would not conflict with the purposes of the ordinance, or altering the essential character of the neighborhood, or threatening the public's health, safety, and welfare. He noted that the two lots would be merged into a single lot and that the setbacks would be even less. He said the buildings were moved off the property lines as much as reasonable. He said granting the variances would do substantial justice because the benefit to the applicant would not outweigh the benefits to the public. He said the requested relief was minimal and that he didn't see a harm to the public. He noted that the applicant addressed the concerns of some neighbors, including density and parking. He said all the required parking was off the street, which was a gain, so he didn't see any harm to the general public or the neighbors that would outweigh the benefit to the applicant. He said granting the variances would not diminish the value of surrounding properties, noting that the Board hadn't received any testimony that those values would be diminished, and said he felt those values would in fact increase. Regarding special conditions, he said the Board discussed how the lot lines looked a lot like neighboring properties, but in looking at them together, with the fact that the duplex was meant to be maintained in its current state, he thought the property as a whole did have special conditions that distinguished it from others in the area, and because of those special conditions, there was no fair and substantial relationship between the general purposes of the ordinance provisions and their application to the property. He said they were talking about setbacks and lot area per dwelling unit, and he didn't think there was a fair and substantial relationship between those provisions and what was being applied. He said the proposed use was a reasonable one – three buildings with four dwelling units, with self-contained parking in a residential area – and it would not impact any more than neighboring properties.

Mr. Moretti concurred with Mr. McDonell. He said the property would require some relief, even without the garage in the back, to put a building on the lot and allow on-site parking. He said the garage addressed prior concerns that he had with the parking in the back and shining headlights at the neighbors, and that the applicant also added greenspace, which was another of his concerns. He said someone driving down the street wouldn't see the garage and that it would give the neighborhood the streetscape it needed instead of the massive buildings proposed in the prior proposals. He said he understood that the hardship was a little difficult to get over but felt that the proposal was probably as good as it would get, short of building a single-family house, which he didn't think was possible in developing that property the proper way.

Chairman Rheume said he would support the motion. He said that, if things were left status quo with the property line, the duplex would require a side-yard setback for the addition, and the addition would be something that the Board would view as a hardship. He noted that the Board typically allowed additions on existing structures with the same width, and the requirement for the left side-yard setback had very little encroachment, so the Board would be granting some type of side-yard relief for that building if they didn't allow the two lots to be merged. He said the new building was an improvement. He said the argument could be made that if the line change wasn't allowed, the structure could be moved over a bit more, but the applicant was improving upon it a bit and providing sufficient room to do maintenance on it without incurring on a neighboring property. He said it wasn't out of character with the neighborhood. He agreed that the back structure imposed on the rear property line and that the Board could require a 3-car garage, but then the applicant could place a parking spot in the extra space on the back property

line, resulting in automobile headlights and idling. He said the tradeoff was not so excessive that it was worth denying because it encroached into the back setback. He agreed with the maker of the motion that the proposal met all the criteria and that he would support it.

The motion failed by a vote of 3-3, with Mr. Parrott, Mr. Lee, and Ms. Eldridge voting in opposition.

Chairman Rheume asked whether the members who voted against the motion wanted to explain their reasoning. Mr. Lee said he felt that the garage encroached a lot on the abutting neighbor. Ms. Eldridge said she was convinced by the argument that a single-family home could work very well on the lot and didn't see anything exceptional about it.

Vice-Chair Johnson resumed his voting seat.

4) Case 3-4

Petitioners: Terrence H. Allen and Andrea B. Allen
 Property: 32 Baycliff Road
 Assessor Plan: Map 207, Lot 43
 Zoning District: Single Residence B District
 Description: Replace existing 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 1'6"± right side yard setback where 10' is required;
 - b) A secondary front yard setback of 7'6"± where 30' is required; and
 - c) 31%± building coverage where 20% is allowed;
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.

SPEAKING IN FAVOR OF THE PETITION

The applicants Terrence and Andrea Allen were present to speak to the petition. Ms. Allen reviewed the petition and the criteria. She said the neighbors were in support. Mr. Allen referred to the letters of support that the Board had.

Vice-Chair Johnson asked what the ridge height of the current structure was. Mr. Allen said it was about 12 feet. Chairman Rheume noted that the existing 1'6" setback was tight for the property line and asked what drove the applicant not to move it closer to the property's center. Mr. Allen said the neighbors wanted to maintain the existing greenspace and that some neighbors would lose views. He said a garage was also up against the property line on that side.

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

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

DECISION OF THE BOARD

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

Mr. Lee said that the current garage was unusable. He said granting the variances would not be contrary to the public interest, would observe the spirit of the ordinance, and would not alter the essential characteristics of the neighborhood because the garage would be a modest structure. He said the project would not pose any threat to the public's health, safety, and welfare or rights. He said granting the variances would do substantial justice because the owners would be able to park in the garage and get off the street. He noted that the street was pretty tight, so there wasn't a lot of room for error, and that the new garage would enhance the street's safety. He said the hardship was that the current garage was unusable because of the way the door was facing and that there was no fair and substantial relationship between the general purpose of the ordinance and its specific application to the property.

Mr. Parrott concurred with Mr. Lee. He said it would be a nice upgrade to the property and noted that double garages were common. He said the lot was smaller than the two adjacent ones and that the criteria were satisfied, so he felt that the petition should be granted.

Chairman Rheume said he would support the motion. He noted that his main concern was the side yard setback but said the applicant had a good reason as to why it needed to be maintained.

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

5) Case 3-5

- Petitioner: Barbara R. Frankel
 Property: 89 Brewery Lane
 Assessor Plan: Map 146, Lot 26
 Zoning District: Character District 4-L2
 Description: Replace existing structure with a Colonial style assisted living home.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. Variances from Section 10.5A41.10A to allow the following:
 - a) a principal front yard of 76'± where 15' is the maximum allowed;
 - b) a right side yard of 37'± where a 5' minimum to 20' maximum is required;
 - c) a front lot line buildout of 50%± where 60% minimum to 80% maximum is required;
 - d) a minimum ground story height of 10' where 11' is required; and
 - e) 13%± façade glazing where 20% minimum to 40% maximum is required;
 2. A Variance from Section 10.5A44.31 to allow off-street parking spaces to be located less than 20' behind the façade of a principal building.

DECISION OF THE BOARD

*Mr. Moretti moved to **postpone** the petition to the April meeting and require that the Planning Department re-advertise it. Vice-Chair Johnson seconded the motion. The motion **passed** by a vote of 6-1, with Chairman Rheaume voting in opposition.*

6) Case 3-6

Petitioner: Petition of Tara F. Trafton Hamblett Revocable Trust 2003, Tara F. Trafton Hamblett, Trustee
 Property: 118 Elwyn Avenue
 Assessor Plan: Map 112, Lot 45
 Zoning District: General Residence A District
 Description: Reconstruct rear deck.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow 27%± building coverage where 25% is the maximum allowed;
2. A variance from Section 10.521 to allow a 6'± right side yard setback where 10' is required;
3. 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.

SPEAKING IN FAVOR OF THE PETITION

The applicant Tara Trafton was present to speak to the petition. She explained why she wanted to reconstruct the deck. She reviewed the criteria and said they would be met.

Chairman Rheaume asked what the reason was for the small increase. Ms. Trafton referred to her contractor John, who said that he was using a 5x5 exterior sleeve and that everything was inset on the actual exterior frame, so it would involve encroaching on the usable space instead of having a post on the exterior that presently existed.

SPEAKING IN OPPOSITION TO THE PETITION TO/FOR 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 Ms. Eldridge seconded.*

Mr. Moretti said it was a moderate replacement for an existing deck and that adding an additional foot for width and a foot for length to allow the railing posts to not impede the deck was a minor request. He said granting the variances would not be contrary to the public interest

and would observe the spirit of the ordinance because the request to slightly enlarge the existing deck was very small and the deck was behind the house and wouldn't be seen from the main street. He said it would improve the rear view of the house as well. He said granting the variances would pose no threat to the public's health, safety, and welfare because the deck was on private property and currently existed, was in sad shape, and needed improvements. He said it would not alter the essential characteristics of the neighborhood because it would not be seen from the street. He said the spirit of the ordinance would be observed because the ordinance was in place to allow the owner to get proper use out of the house and enjoy the house, with safe access to the rear and improving the stairs. He said the hardship was that the deck was in sad condition and would have to be replaced in some manner.

Ms. Eldridge concurred with Mr. Moretti and noted that it was a minor change and would improve the house and the neighborhood and keep to the neighborhood's style.

Chairman Rheume said he would support the motion. He said the hardship was the entry to the back of the house, and he felt that the applicant made a good case that it required the deck to be in that particular location.

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

IV. ADJOURNMENT

*At 10:10, it was moved, seconded, and passed by unanimous vote (7-0) to **adjourn** the meeting.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary