

**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.

**July 24, 2018
Reconvened from
July 17, 2018**

MEMBERS PRESENT: Chairman David Rheau, John Formella, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternates Phyllis Eldridge and Chase Hagaman

MEMBERS EXCUSED: Vice-Chairman Jeremiah Johnson

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheau noted that Case 7-8 was withdrawn by the applicant.

IV. NEW BUSINESS – PUBLIC HEARINGS (continued from the July 17, 2018 meeting)

6) Case 7-6

Petitioner: Two-Way Realty LLC, owner, Port City Nissan, Inc., applicant

Property: 120 Spaulding Turnpike

Assessor Plan: Map 236, Lot 33

Zoning District: General Business and Single Residence B

Description: Construct a 12,000 s.f. vehicle storage area for 65± vehicle capacity

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

- a) from Section 10.591 to allow vehicle storage within a residential zone where 100 feet is required;
- b) from Section 10.592.20 to allow a motor vehicle dealership to be less than 200 feet from a residential district; and
- c) from Section 10.440, Use #10.60 to allow outdoor motor vehicle storage in a residential district.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant to speak to the petition. He introduced the project engineer Eric Weinrieb and the applicants Jennifer and Justin Fecteau.

Mr. Weinrieb reviewed the history of the property and discussed its constraints, such as the wetland buffer and sewer easement, pointing out that the property was encumbered by the residential zone. He reviewed the landscaping, parking, vehicle storage, pavement, runoff, and other issues. Attorney Phoenix reviewed the petition, noting that the rear three-quarters of the lot was in a residential zone. He explained why the variances were needed, emphasizing that the vehicle storage would not be seen by the public way and that the natural buffer would help. He reviewed the criteria and said they would be met. He also submitted to the Board a letter in approval from New England Marine and Industrial.

Ms. Eldridge asked whether the lighting would be on all night. Attorney Phoenix said it would be resolved in the Planning Board process. Ms. Eldridge asked whether there was any feedback from the neighbors, and Attorney Phoenix said he had not heard anything.

Mr. McDonell noted that the service bay would take away some parking and asked whether it would be feasible to get one or the other. Attorney Phoenix said the zone had changed in the past and that the whole strip was burdened by the same things. Chairman Rheaume asked how many parking spots the applicant would give up by creating the improved drive-through arrangement. Mr. Weinrieb said it would be 30 or so spaces. Mr. McDonell said he didn't see how the special conditions would allow development in both zones of the lot. Attorney Phoenix said the drive-in area would provide better up-to-date service for the customer but would result in lost parking. He pointed out that there would be two displays out front, with the rest in the back. It was further discussed. In response to further questions from the Commission, Mr. Weinrieb said the distance to usable property for an adjoining neighbor was 115 feet, and he explained what the porous pavement would consist of. Mr. Fecteau said the dealership would close at eight p.m.

Mr. Parrott asked whether the applicant had considered building up, given that the objective was to get more storage space for cars. Attorney Phoenix said it was an issue of economics and access and that ramps or elevators would have to be built. Mr. Weinrieb said the building would have to be demolished. Mr. Parrott asked about having a separate building. Mr. Weinrieb said it would require similar variances. Mr. Hagaman asked whether the project required moving any power lines. Attorney Phoenix said Eversource gave conditional approval and that they would work around the wires and not change anything.

SPEAKING IN OPPOSITION TO THE PETITION

Lenore Bronson of 828 Woodbury Avenue said she represented several of her neighbors, who were also opposed to the petition. She said the requested variances were a disregard of the zoning ordinance. She said the business could change ownership and have different hours. She said the project would affect nearby property values, the wetlands, and neighborhood parking.

Suzanne Ford of 88 Farm Lane stated that the zoning was to keep businesses from infringing on the residential area and that the expansion was at the cost of the residents.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix stated that there would be limited hours of use on the parking area and that they would consider removing the last two rows of parking to reduce it from 65 to 45 cars and get it further away from the residents.

Ms. Bronson said if the Commission granted the variances, they would be rezoning the land. She said her concerns were the test drivers speeding on Farm Lane, the school bus stop, adding more cars to the existing traffic, and the impervious surface.

Mr. Weinrieb said they would add green space within the area next to the building and within the wetland buffer area. He said the speeding was an enforcement issue but that he believed that Nissan's sales personnel were very aware of the neighborhood and the bus stop.

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

DISCUSSION OF THE BOARD

Mr. Mulligan said the tricky variance was the one allowing vehicle storage within a residential district and within 100 feet from a residential zone, but he said that part of the lot was SRB in name only and that no residence could be built there due to the power line easement. He said the spirit and intent of the ordinance was to separate commercial uses and storage from actual residential uses, and he thought the project accomplished that, especially because the applicant was willing to eliminate some of the parking closest to the residences and upgrade the facility in a reasonable way. He said the applicant was sort of replacing in kind the parking they would lose from that upgrade and doing it in the only available area. He said he understood the concerns but that it was a dense neighborhood and he didn't see an over-intensification of use.

Chairman Rheaume said it wasn't the first time the Board had seen something related to those parcels, which were business-oriented and had a tense relationship with the Spaulding Turnpike and the residential neighborhood behind it. He also noted that the land between the business district and the residents that was zoned as the residential district could have been intentional to squeeze the businesses into that narrow strip of land, which had triggered several variances for those businesses as a result. He said he was comfortable with offsetting some of the lot parking but didn't like the idea of expanding the business into the SRB district and the parking lot, although he could live with some portion of it. Mr. McDonell said he was concerned about granting all the requested relief and didn't see why the applicant had to be less than 200 feet from the next residential lot. He said that cutting the parking down to maybe 20 spaces would seem reasonable. The Commission decided to stipulate that the parking inside the residential district would be no closer than 200 feet from the closest residential line.

DECISION OF THE BOARD

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

- *That the proposed parking area come no closer than 200 feet to any other residential lot line.*

Mr. Mulligan seconded.

Mr. McDonell said the property did have special conditions and that he could understand a residential neighbor not wanting to have a commercial development encroach on their space any more than it needed to. However, he said he bought the argument that the utility easement and the location of the SRB and General Business Zone line was enough of a special condition that it would cause a hardship to the property. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, noting that he didn't really see the proposed addition as being of great concern because it wouldn't be more than 200 feet from any residential lot. He said that all of it, with the exception of the landscaping, was within the General Business Zone. He said the parking was a non-intensive use as long as it didn't get closer than 200 feet to the residential lots, so he didn't see how it would alter the character of the mixed-use neighborhood and thought it was a reasonable compromise. He said substantial justice would be done because if the applicant was allowed to get all the way to the back of the lot, there could be substantial harm to the general public and the neighbors in the back, but he thought it was a reasonable compromise, seeing that the applicant really wanted to have the service bay and storage area. He said that granting the variances would not affect the value of surrounding properties because the actual building addition will not intensify commercial use and the parking as set back by the stipulation is reasonable and will not have any impact. As for hardship, he noted that the special conditions had been discussed and that there was no relationship between the purpose of the ordinance and its special application to the property. He said the proposed use was a reasonable one with the stipulation and limitations that the Board proposed.

Mr. Mulligan concurred with Mr. McDonell and said he had nothing to add. Chairman Rheaume said he would support the motion because he felt that it was a good compromise.

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

7) Case 7-7

Petitioners: Michael R. & Denise Todd
 Property: 254 South Street
 Assessor Plan: Map 111, Lot 4
 Zoning District: Single Residence B
 Description: Construct a rear deck addition
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 a) from Section 10.521 to allow 27%± building coverage where 20% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owner Denise Todd was present and reviewed the petition, stating that the purpose for the new deck was for storage space underneath. She reviewed the criteria and said they were met.

In response to the Commission’s questions, Ms. Todd stated that she wanted to build on the existing crushed stone that was under the current deck and that the porch roof would not be expanded over the deck.

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

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

DECISION OF THE BOARD

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

Mr. Mulligan said that granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the essential character of the neighborhood would not be altered by expanding an existing deck, especially over the footprint of what was already built on the property. He said substantial justice would be done because the loss to the applicant if denied would outweigh any potential gain to the public. He said the property was already slightly over the required building coverage due to the existing deck, and it was just an extension of the existing deck. He said granting the variance would not affect the value of surrounding properties because the deck wouldn’t be visible from the street and only minimally from other properties. He also noted that the project would have to get approval from other land boards. As for hardship, he said the special conditions of the property were that it was burdened by the wetlands and sloped downwards, so there was no fair and substantial relationship between the purpose of the building coverage requirement and its application to the property. He said if the applicant were forced to produce storage some other way, it would benefit no one. He said it was a reasonable residential use in a residential zone and met all the criteria.

Mr. Parrott concurred with Mr. Mulligan. He said it was a modest expansion in the middle of the lot and would have no effect on the neighbors.

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

8) Case 7-8

Petitioners: Petition of RKW Investment Properties LLC, owner and Portsmouth Believers Church, Inc., applicant
 Property: 115 Heritage Avenue
 Assessor Plan: Map 285, Lot 5-1
 Zoning District: Industrial District
 Description: Religious assembly use.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:

- a) under Section 10.440, Use #3.11 to allow a religious place of assembly where the use is not permitted.

ACTION: The Board acknowledged that the petition had been withdrawn by the applicant.

Mr. Mulligan recused himself from the petition, and Mr. Hagaman assumed his voting seat.

9) Case 7-9

Petitioner: Noelle B. Beadling
Property: 86 Thornton Street
Assessor Plan: Map 160, Lot 2
Zoning District: General Residence A
Description: Convert basement space into a dwelling unit.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.521 to allow a lot area per dwelling unit of 1,960± s.f. where 7,500 s.f. is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

The applicant Noelle Beadling was present to speak to the petition. She said she wanted to remodel the downstairs studio and that there would be no exterior changes except for a small window. She reviewed the criteria and said they would be met.

Mr. McDonell said the requested relief would cut the required minimum lot area by half. He noted that the applicant said she couldn't use the property in a reasonable manner but that it seemed that she was currently doing so. Ms. Beadling said the remodel would allow her to have two separate units and provide another living space to put a kitchen in. She said the property shape was an odd one and that she wouldn't have the lot limitation issue otherwise.

Mr. Hagaman said he drove by the house and noticed two cars and a moped, and he asked about the current parking situation and how it would change. Ms. Beadling said there were currently three occupants in the house and enough room for two cars on the lot and one in the street, but that they could fit three cars in the driveway if necessary. Mr. Stith noted that the parking requirement was 2.3 spaces, so the property had room for three parking spaces.

Mr. Lee asked whether an Accessory Dwelling Unit (ADU) was considered. Ms. Beadling said she spoke with the Planning Department about options but was told that it would require more variances. In response to Chairman Rheaume's questions, the applicant said both the current area and the proposed area were within the property line and that there was no easement of common use for the surrounding yard area that belonged to the neighboring portion.

SPEAKING IN OPPOSITION TO THE PETITION

Kevin Clark of 55 Thornton Street said the applicant's house was a duplex and that the project would turn it into a triplex, which he felt that there wasn't enough land to do that.

Steve Miller of 38 Thornton Street said the proposal would be contrary to public interest because the intersection was already troubled. He said the parking was already tight and that there were recently 5-6 cars parked on the applicant's property and on the street. He said the project would increase congestion and human use of the area and would be detrimental to the neighborhood.

Kevin Clark of 55 Thornton Street agreed that traffic would increase in the neighborhood.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Beadling said there were three residents at the property who each had a car, and one who had a moped, but that other neighbors had several cars on the street. She said there wouldn't be any more occupants than there already were and wouldn't increase the parking.

Mr. Lee asked whether the property was used as a duplex. Ms. Beadline said it was zoned as a single building and that it only looked like a duplex because the building was split into two. She said she lived in the basement and that the other two lived above, and that the same arrangement would continue, only she'd have a stove in the remodeled area.

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

DISCUSSION OF THE BOARD

Chairman Rheume noted that two properties owning a common building was a rare situation. Mr. Stith said the petition met the offstreet parking requirements and noted that two families could have tandem parking spaces. Mr. McDonell said he still didn't see the hardship because the shape had nothing to do with the relief requested and the fact that it was a small lot with half a house on another lot wasn't relevant to having a hardship. Chairman Rheume said he was torn by the application but didn't think it would change the status quo and felt that it would provide adequate parking. He agreed that it was a lot of relief requested and could see the hardship, in that the property was on a slope, but he pointed out that the applicant wasn't asking to build or expand anything. He noted that it was the type of housing that Portsmouth needed and that the proposal would also give more independence between the upper and lower units. Mr. Formella agreed but said he could go either way because the project fit within the intent of the ADU statute and the property was unique.

DECISION OF THE BOARD

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

Mr. Formella said it was a tricky application but fit within the spirit of what the Board tried to allow under the new ADU statute. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the project would not alter the essential character of the neighborhood. He said there was a fair amount of density in the neighborhood, with other multiple-unit properties, and the project would add a new unit but wouldn't increase the number of residents or change the number of cars. He said it would do substantial justice because there would be no gain to the public by denying it, and it would be a loss to the applicant. He said the gain was having separate units and a full kitchen. He said granting the variances would not diminish the value of surrounding property values, noting that there was no evidence. He said the hardship was that the property was unique with special conditions that included being a small property with one building subdivided into two, so because of its current configuration, it was already non-conforming. He said the change was not significant, considering that the property's intensity of use wouldn't increase, so there was no substantial relationship between the provision of the ordinance and its application to the property. He said the proposed use was a reasonable one and that two units was an allowed use.

Mr. Hagaman concurred with Mr. Formella and said his initial concern with the parking issue was quelled. He said the use was in line with the Board's discussion about the ADU.

The motion passed by a vote of 6-1, with Mr. McDonell voting in opposition.

Mr. Mulligan resumed his voting seat.

10) Case 7-10

Petitioners: Jeffrey P. Bartolini and A. Rachel Roemer
 Property: 130 Pine Street
 Assessor Plan: Map 162, Lot 29
 Zoning District: General Residence A
 Description: Replace existing shed with the same footprint in the same location.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.521 to allow a 0'± right side yard where 10' is required;
 b) from Section 10.521 to allow 28%± building coverage where 25% is the maximum allowed; and
 c) 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 Jeffrey Bartolini was present to speak to the petition. He said his current shed was rotting and that he wanted to replace it with a new shed of higher quality using the same footprint, style, and size. He reviewed the criteria and said they would be met.

In response to the Commission's questions, Mr. Bartolini stated the following:

- The new shed would be taller by 12-14 inches and would not impact the neighbor.
- There were interior structural issues, including a dirt floor and rot.
- The other structure on the opposite side of the house was a shed that was half the size and was used to store lawn equipment, while the new shed would be used for general storage.
- There was no electricity or plumbing in the current shed but that he would run electric power for the new shed and would do a finished interior.
- Each unit of the two-family home had a dedicated back yard and parking.

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

Mr. Bartolini stated that all three of the abutting neighbors were in favor of the project.

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

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variances for the project as presented and advertised, and Ms. Eldridge seconded.*

Mr. Lee said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because replacing a deteriorated shed would not alter the essential characteristics of the neighborhood. He said substantial justice would be done because the applicant would be able to replace his shed and make it more serviceable. He said granting the variances would not diminish the value of surrounding properties and that the hardship was that the existing shed was deteriorating and becoming unusable.

Ms. Eldridge concurred with Mr. Lee and had nothing to add.

Chairman Rheaume said he would support the motion. He noted that the Board normally tried to avoid a zero setback, but said the existing structure was forced to the edge and there were neighboring properties tight to it, but the structure was making full use of the property line and would not impact the light and air of the neighbors. He said that the maintenance would be the same as the existing structure. He concluded that it was a unique set of circumstances.

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

11) Case 7-11

Petitioners: Cassandra M. Saltus Declaration of Trust, Cassandra M. Saltus, Trustee, owner, Derek Bickford, applicant

Property: 122 Essex Avenue

Assessor Plan: Map 233, Lot 66

Zoning District: Single Residence B

Description: Construct an 18'± x 6'± front farmers porch.

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

- a) from Section 10.521 to allow a front yard of 13'± where 30' is required; and
- b) from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirement of the Ordinance.

SPEAKING IN FAVOR OF THE PETITION

The applicant Cassandra Saltus was present to speak to the petition. She introduced the contractor Derek Bickford. She said she wanted to add a covered Farmers' porch to replace the existing uncovered stoop, which would solve several issues, like removing the failing stoop and preventing snow and ice from the metal roof that would damage an uncovered porch.

Mr. Hagaman asked whether the existing structure could be rebuilt. Ms. Saltus said the increase of a foot made it so that the front door could not open on the current porch. Mr. Bickford added that the existing deck was 5'11" with the stairs coming down, and the new deck would be 6'4", resulting in 13 feet to the property line.

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

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

DECISION OF THE BOARD

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

Mr. Mulligan said that granting the variances would not be contrary to the public interest or the spirit of the ordinance and that the essential character of the neighborhood would not be altered, nor would the public's health, safety, and welfare be threatened. Substantial justice would be done because the loss to the applicant would not be outweighed by any gain to the public. He said granting the variances would not diminish the values of surrounding properties, who would not be affected by the porch. He said the hardship was that the lot was large for the area and had a

wide home that sat closer to the front of Essex Street than some of the neighboring properties. He said it was a reasonable residential use in a residential zone and met the criteria.

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

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

12) Case 7-12

Petitioners: Shawn A. Dick
 Property: 869 Woodbury Avenue
 Assessor Plan: Map 219, Lot 37
 Zoning District: Single Residence B
 Description: Replace damaged home and detached garage with a single family home and attached garage.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.521 to allow a lot area and lot area per dwelling unit of 10,018± s.f where 15,000 is required.

SPEAKING IN FAVOR OF THE PETITION

The applicant Shawn Dick was present to speak to the petition. He said he wanted to demolish the existing home that was damaged by fire and build a new home with an attached garage. He reviewed the criteria, noting that the project would also improve parking by having fewer cars on the street and that the new house would be within the setbacks, unlike the existing house.

Paul Frohn of 86 Meadow Road said the new home would be more conforming to the neighborhood and would also have a nicer appearance than the original home.

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 variance for the petition as presented and advertised, and Mr. McDonell seconded.*

Mr. Parrott said the lot was consistent in size and shape with other lots in the immediate area. He said that granting the variance would not be contrary to the public spirit and would observe the spirit of the ordinance because it would not alter the essential characteristics of the neighborhood

nor threaten the public’s health, safety, or welfare. Substantial justice would be done because the benefit to the applicant was clear, in that the house burned and was not restorable to a decent living condition. He said there would be no harm to the general public by replacing a damaged and unredeemable house. He said granting the variance would not diminish the value of surrounding properties because the new house would be attractive and built to code and would be a credit to the neighborhood, which would be reflected in the value of surrounding properties. As for the hardship, he said the purpose of the ordinance was not to make life difficult in an unfortunate event like a fire. He noted that the applicant was doing the right thing by replacing the house that was beyond repair and making it more conforming with the setbacks.

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

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

Mr. Mulligan recused himself from the petition and Mr. Hagaman assumed his voting seat.

13) Case 7-13

Petitioner: Bruce A. Clark
 Property: 893 Woodbury Avenue
 Assessor Plan: Map 219, Lot 36
 Zoning District: Single Residence B
 Description: Replace existing garage with an attached two-car garage.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.521 to allow an 8’± right side yard where 10’ is required;
 b) from Section 10521 to allow a 23’± rear yard where 30’ is required; and
 c) 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

Attorney Bernie Pelech was present to speak to the petition on behalf of the applicant. He said the existing garage would be demolished and replaced by an attached 2-car garage, which would allow the handicapped owner easier access to the house. He reviewed the criteria and submitted a letter in approval from the abutter. He also introduced the project architect Lisa DeStefano.

In response to Mr. Hagaman’s questions, Ms. DeStefano said they decided not to do a large double-width garage door because the smaller garage doors were more in keeping with the scale of the house, were more aesthetic in aligning with the back deck, and provided extra storage for lawn equipment. She said the space above the garage would be left unfinished.

Matthew Coutis of 869 Woodbury Avenue said the project would allow ease of access to the road and increased safety and visibility. He said it would also take a car off the street.

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

No one else 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. Parrott seconded.*

Mr. McDonell said it was a reasonable request to add a second bay to the garage. He said it would add some height to the structure but noted that the abutter said he had no concerns with it, and he didn't think the other neighbors would have concerns. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He didn't see any conflict with the purpose of the ordinance or alteration in the characteristics of the neighborhood, nor any threat to the public's health, safety, and welfare. He agreed with the abutter that getting a car off the street and improving the owner's mobility made sense. He said substantial justice would be done because there would be no harm to the public but an obvious benefit to the applicants by having a second garage bay. He said granting the variances would not diminish the value of surrounding properties because the garage addition and expansion were tasteful. He said the main hardship was the location of the existing structure and the fact that there was no feasible way to add a second bay or a two-car garage without slightly encroaching on the side setback. He said that removing the shed and adding the two-car garage would add a bit more mass but not substantially. He said he saw no fair relationship between the purposes of the ordinance and its application to the property. He said the use was a reasonable one.

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

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

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

Mr. Mulligan was recused from the petition. Mr. Hagaman assumed his voting seat.

14) Case 7-14

Petitioner: 206 Court Street, LLC
Property: 206 Court Street
Assessor Plan: Map 116, Lot 34
Zoning District: Character District 4-L1

- Description: Construct a 36'± x 20'± rear addition.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
- a) from Section 10.5A41.10A to allow a lot area per dwelling unit of 979± s.f. where 3,000 s.f. is required;
 - b) from Section 10.5A41.10A to allow façade glazing of 16%± where 20% is the minimum required;
 - c) from Section 10.5A41.10A to allow a 9'± ground floor height where a minimum of 11' is required;
 - d) from Section 10.1114.21 to allow two parking spaces with a width of 8'± where 8.5' is required;
 - e) from Section 10.1114.32(b) to allow vehicles to enter and leave the parking area by backing into or from a public street or way; and
 - f) 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

Attorney Bernie Pelech was present on behalf of the applicant to speak to the petition. He introduced the owner Todd Adelman. Attorney Pelech briefly reviewed the property's history and the variances. He reviewed the criteria and noted that the two parking variances were to allow vehicles to back out of the property.

In response to questions from Mr. Hagaman, Attorney Pelech said the residents would have to back out because the applicant couldn't get an easement to go across the neighbor's property. He said the big trees in the back were on the abutting property. Chairman Rheume said he was okay with the variances for the three residences but was concerned about the parking spots. He asked whether the applicant really needed the two spots. Mr. Stith said the applicant would need a Conditional Use Permit (CUP) for four parking spots.

Mr. Adelman said the church used to fit six cars in that space on a daily basis and that the abutter had 2-5 cars that all backed out. He noted that there was a mirror to mitigate the risks.

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.

DISCUSSION OF THE BOARD

Mr. McDonell said his initial parking concerns were lessened, knowing that backing out was done without incident almost all the time. Mr. Hagaman said he didn't want to rubberstamp it

just because others said it was safe, and he suggested crafting an entry point that pulled in perpendicular to the building. Chairman Rheume said he was torn about the parking as well and said he voted against a similar parking arrangement on a different petition that was approved by other land boards anyway. He also noted that other housing was being developed that had better entry and exit points and that the traffic was increasing in the neighborhood, which made it difficult to back out into the street. The Commission discussed what would happen with the Planning Board review if the Commission allowed the residents to back out.

DECISION OF THE BOARD

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

Mr. Formella said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said that allowing three dwelling units would not alter the essential character of the neighborhood, seeing that the building was in the downtown area in a commercial and dense neighborhood. As for whether the parking issue would threaten the public's health, safety, or welfare, Mr. Formella noted that the applicant made a decent argument that it would not, and he also noted that two other land boards would consider the issue. He said the back-out mirror was there and that other cases had worked in terms of backing out. He said substantial justice would be done because there would be no gain to the public by denying the variances. He said the lot would almost be unusable by not granting at least the-lot-area-per-dwelling unit, and there was no evidence that surrounding properties would be diminished by refurbishing the building into a nice 3-unit residential one. He thought it would actually increase surrounding property values. He said the hardship was that the property was unique and the lot was very small compared to the other lots in the area, and he didn't think that applying the lot-area-per-dwelling unit made sense because requiring 3,000 square feet per dwelling unit in that area of town wouldn't be reasonable. He said the proposed use was a reasonable one as well as a permitted one.

Mr. Parrott concurred with Mr. Formella and had nothing to add.

*The motion **passed** by a vote of 6-1, with Chairman Rheume voting in opposition.*

V. ADJOURNMENT

*At 10:30, it was moved, seconded, and passed by unanimous vote to **adjourn** the meeting.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary