

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

7:00 P.M.

December 18, 2018

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, John Formella, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Chase Hagaman

MEMBERS EXCUSED: Jim Lee, Alternate Phyllis Eldridge

ALSO PRESENT: Peter Stith, Planning Department

I. ELECTION OF OFFICERS

*It was moved, seconded and **passed** by unanimous voice vote to re-elect David Rheaume to serve as Chairman and Jeremiah Johnson to serve as Vice-Chairman until the next Election of Officers.*

Chairman Rheaume stated that Alternate Chase Hagaman would sit in on all the cases.

II. APPROVAL OF MINUTES

A) November 20, 2018

*It was moved, seconded, and **passed** by unanimous vote to approve the November 20, 2018 minutes as amended.*

III. PUBLIC HEARINGS - OLD BUSINESS

A) Case 11-1

Petitioners: Ryan and Karen Baker

Property: 137 Wibird Street

Assessor Plan: Map 134, Lot 48

Minutes Approved 1-15-19

Zoning District: General Residence A
Description: Construct semi-attached garage.
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:
a) a 2.5' *left side yard* where 10' is required; and
b) 27%± building coverage where 25% is the maximum allowed.
(This petition was tabled at the November 20, 2018 meeting and has been revised with the changes in italics above.)

Mr. Parrott moved to take the petition off the table, and Mr. Hagaman seconded. The motion passed by unanimous vote, 7-0.

The applicant Ryan Baker was present to speak to the petition. He said he agreed with the Board that the zero-foot setback was too close, noting that was the reason he chose not to pursue the easement option. He said he chose Option 2, which would increase the side setback to 2.5 feet and make it less intrusive. In response to Mr. Hagaman's questions, Mr. Baker said the dormer was aesthetic, that the sketch for the garage was a placeholder instead of to scale, and that he knew exactly where the property line was.

*It was moved, seconded, and passed by unanimous vote to **re-open** the public hearing.*

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

DECISION OF THE BOARD

Mr. Stith recommended that homeowners with similar petitions include a survey confirming that the plus-minus distance was within two inches so that they did not have to return for another hearing.

*Mr. Parrott moved to **grant** the variances for the application as presented, with the following stipulation, with respect to Mr. Stith's comment:*

- *The left side yard is granted as 2.5' plus or minus a maximum of 6" to allow for changes in construction circumstances that would determine the final setback.*

Vice-Chair Johnson seconded.

Mr. Parrott said it was a simple situation and that the only concern he had with the initial proposal was the side setback. He said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because there was no compelling indication that the public's health, safety, or welfare would be in danger. He said it was a modest proposal in a well-established neighborhood in which there were similar situations where the

buildings were too close to the property line. Substantial justice would be done because a garage was a clear benefit to the homeowner, and the garage was modest, not overbuilt for the lot, and in a logical location. He said granting the variances would not diminish the value of surrounding properties because the garage would be situated such that it would blend in with the neighborhood. He said the hardship was that the property was fairly large on a small lot and that the location of the garage was the only logical place to site it. He said the garage would look like it belonged and would have a beneficial effect on the homeowner's property as well as surrounding ones.

Vice-Chair Johnson concurred with Mr. Parrott and had nothing to add.

Chairman Rheaume said he would support the motion. He noted that the lot was subdivided with the idea that the house wouldn't require anything additional, but he realized that the applicant was the new homeowner and had heard the Board's concerns above moving the garage back. He said the structure was modest and that other garages in the neighborhood were very close to the property lines, so he was willing to support it.

The motion with the stipulation passed by unanimous vote, 7-0.

IV. PUBLIC HEARINGS - NEW BUSINESS

1) Case 12-1

Petitioners: Jon R. & Karin E. Allard

Property: 24 Burkitt Street

Assessor Plan: Map 160, Lot 23

Zoning District: General Residence A

Description: Replace an existing rear porch with a 10'± x 22'± enclosed porch and stairs.

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 5'± left side yard where 10' is required; and
- b) From Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

SPEAKING IN FAVOR OF THE PETITION

The owner Jon Allard was present to speak to the petition. He noted that the porch had a rotted corner and wasn't usable, so he and his wife wanted to replace it with a porch that matched the width of the house. He said they needed a lesser side setback to install a landing and stairs. He said his neighbors approved the project, including the most affected abutter.

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. McDonell seconded.*

Mr. Mulligan said the applicant demonstrated that the existing porch needed to be replaced for several good reasons, and that what drove the relief was placing the landing and stairs into the side setback. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the essential character of the neighborhood would not be affected. Substantial justice would be done because the loss to the applicant would require strict compliance with the side yard setback and would far outweigh any gain to the public. He noted that the home violated the setback but that the increase was just an incremental one. He said granting the variances would not diminish the values of surrounding properties, noting that the most affected neighbor was in favor and that the project would result in new construction that would enhance home values in the neighborhood.

Mr. Mulligan stated that literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. The side yard setback was already nonconforming and there is no fair and substantial relationship between the side yard requirement and its specific application to this property as the applicant is proposing to simply replace the existing deficient porch with a more modern larger one with a better access point. The slight additional encroachment is not significant. He stated that this is a reasonable residential use in a residential zone.

Mr. McDonell concurred with Mr. Mulligan.

Chairman Rheume said the stairs would need to meet code. Mr. Stith verified that the stairs were being built to code and that the applicant had to comply with building code for egress. Mr. Mulligan asked whether the relief granted was the minimum needed for the landing and stairs to meet that code, and Mr. Stith agreed.

Mr. Mulligan amended his motion to add the following stipulation which was seconded by Mr. McDonell:

- *The left side yard may be adjusted as necessary to ensure that the proposed stairs and landing meet the minimum dimensions necessary to comply with the Building Code.*

*The motion with the stipulation **passed** by unanimous vote, 7-0.*

Petitioners: Jason R. and Natasha A. Karlin
Property: 88 Lincoln Avenue
Assessor Plan: Map 113, Lot 12
Zoning District: General Residence A
Description: Replace a detached garage with a garage plus attic and construct a two and a half story rear addition.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from the following:
a) from Section 10.521 to allow a rear yard of 3’7” ± where 20’ is required;
b) from Section 10.521 to allow 35%± building coverage where 25% is the maximum allowed; and
c) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

SPEAKING IN FAVOR OF THE PETITION

The applicant Jason Karlin was present and reviewed the petition, noting that he wanted to enlarge the house for social gatherings. He explained why the extra space was needed and said the neighbors approved the project.

Chairman Rheume said that the neighbor at 43 McNabb Court was concerned about glazing and asked whether it had been addressed. Mr. Karlin said that he and the neighbor had agreed that frosted glass was okay for the south-facing window.

Chairman Rheume verified the two front yard setback dimensions with Mr. Stith.

In response to further questions from Chairman Rheume, Mr. Karlin said he would not re-use any existing slab on the garage and that he had not considered moving the garage closer to the house because he felt that it wasn’t encroaching more than existing.

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. Hagaman said it seemed like an opportunity to improve the setback. Vice-Chair Johnson said he had no problem with keeping the same setback because the lot was unique. He said the expansion was big but that everything was shifted to one side, leaving a lot of open space. Chairman Rheume said he was okay with it because it was closer to the side setback, even though he preferred to see an improvement in the rear setback.

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

Mr. McDonell said he agreed with the concerns raised but felt that the main driver of the proposal was to get more living space. He said the two-car garage didn't look like it would fit into the space without getting close to the existing rear yard setback. He said it was a corner lot and that the neighbor thought of it as a side setback, so he felt that it was reasonable. He said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He noted that the addition was a big one but didn't think that it would be so big that it would alter the essential character of the neighborhood or pose a threat to the public's health, safety, or welfare. He said substantial justice would be done because there would be no harm to the general public and the benefit would be to the applicant because the applicant wanted a bigger house with more living space, which he felt was a more reasonable use of the property. He said he had not heard anything that would diminish the value to surrounding properties. He said the hardship was that it was a corner lot and what was technically a rear yard setback was more like a side yard setback, so the relief requested would be more minimal. He said the other special condition of the property was the siting of the building, and he felt that the applicant did a good job of moving the mass of the addition toward the center of the property. He said the requested relief was therefore pretty minimal and that he saw no fair and substantial relationship between the purposes of the ordinance with the setback requirement and building coverage requirements and the special application of those provisions to the property. He said the proposed use was a reasonable one.

Mr. Parrott concurred with Mr. McDonell and noted that the lot was only 5,000 square feet and that the design was appropriate in getting the additional space and garage to make the house more usable. He said the proposed garage was as modest as possible to make a double garage.

*The motion **passed** by unanimous vote, 7-0.*

3) Case 12-3

Petitioners: Jennifer & Dylan Thomas

Property: 279 Wibird Street

Assessor Plan: Map 133, Lot 35

Zoning District: General Residence A

Description: Construct a mudroom and 24'± x 26'± garage with second floor living space.

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 right side yard of 5'3" ± where 10' is required;
- b) from Section 10.521 to allow 26% building coverage; and
- c) from Section 10.321 to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

SPEAKING IN FAVOR OF THE PETITION

Attorney Monica Kieser was present on behalf of the applicant to speak to the petition. She introduced the project designer Dennis Morrell. She reviewed the petition and criteria.

Mr. Mulligan asked why the existing wraparound porch would be removed. Attorney Kieser said it was to allow more room for lot coverage and that it was also dilapidated. She said it didn't get a lot of use because the homeowners preferred to be in the back yard, where there was a lot of open space. In response to further questions from the Board, Attorney Kieser said the new livable space would be over 3,000 square feet, compared to the existing space of 2,100 square feet. She said the garage's location was driven by the need for turning radius in the narrow lot.

Chairman Rheume said it was a substantial addition. He said he understood expanding off the third floor of the existing structure but felt that the additional structure and the second-floor master bedroom suite were impressive. He asked whether the applicant had considered trying to bring the second floor back in to make it more in line with the 10-ft setback so that the imposing nature of the 5-ft setback was not as much. Mr. Morrell said he made the garage large enough for two cars and that the owners were comfortable with the size.

Chairman Rheume asked whether the addition could be made fully compliant with the setback. Attorney Kieser said they could not do so because the garage had to be deep enough for two cars and some storage and that they also didn't want to take any space from the existing second floor.

Mr. Hagaman suggested narrowing and lengthening the garage to make it more usable for storage. Mr. Morrell said they hadn't considered it due to the bulkhead, the condensers, and the steps, but that they could review changing the shape of the garage.

**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. Mr. Mulligan said the proposal was substantial but didn't think that the amount of requested relief was all that significant in light of the significant improvements to the property. Vice-Chair Johnson agreed. He said the garage was generously sized and thought the applicant could figure out a way to get under the one percent. He noted that it was a lot of house and thought the setback relief was less than it would be with the porch. He said it was a narrow lot with tightly-packed lots and that most of the impact would be internal to the site. Mr. Hagaman said he had the same concerns about the porch. He said he understood that the relief was modest in that it improved one of the right yard setbacks, but the nature of what was presented was character-wise very different from the original single-story porch that had open air and was not imposing. He said the applicant could meet the building coverage

variance by making minor tweaks to the garage and living space and pulling it off the lot line a bit to make it less imposing.

Mr. Stith said the condensers would typically require meeting the 10-ft setback. Chairman Rheume said what the Board would approve would include the condensers, so it wasn't a problem. He said the project was a substantial addition going up against the property line that included two big stories, a tall roof, a good-sized garage, and a master bedroom suite. He said that a reasonable house could have less and that he was torn about the imposing nature.

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

Mr. Mulligan noted that the applicant was proposing a significant improvement to the property but that the amount of relief requested was fairly minimal. He said granting the variances would not be contrary to the public interest and would not violate the spirit of the ordinance. He said the essential residential character of the neighborhood would not be changed by what was proposed and that the public's health, safety, and welfare would not be implicated by the building coverage increase or setback relief. He said substantial justice would be done because the lot could not have strict compliance and was already deficient as far as lot area, frontage, and side yard setbacks. He said granting the variances would not diminish the value of surrounding properties, noting that the applicant was prepared to sink a huge amount of money into the property and that the substantial and expansive new construction would increase surrounding values. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the property had special conditions, including that it was a large structure on a narrow lot and the lot lines were perfect right angles with Wibird Street, so there were issues as far as getting in and out of the garage and that the applicant needed an appropriate turning radius. He said he understood everyone's concern that the project could have been designed differently, but he felt that what was proposed was a very minimal increase in building coverage over what was allowed and that the setback proposed was a slight improvement over existing. He said it came down to the question of whether the setback of 2-1/2 stories of encroachment as opposed to one was significant enough that the hardship criteria was not met, and he didn't think it was significant enough. He said the applicant proposed to have the encroachment and it would not have a significant impact to the most immediate abutter. He noted that the Board always said that the purpose of setback requirements was to assure sufficient light and air as well as access to the property, and he thought that the applicant was clear about the existing front porch inhibiting light, air, and access. He said he credited the applicant's removal of the front porch to improve the property and stay as close to the building coverage percentage as they could. He said the project met all the criteria and should be approved.

Mr. Parrott concurred with Mr. Mulligan. He said that the most constraining aspect of the project was the width of the lot itself. He said the house was dated and needed substantial construction to bring it up to current standards, and that the net amount of relief requested was pretty modest.

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

4) Case 12-4

Petitioner: Margot L. Thompson

Property: 57 Salter Street

Assessor Plan: Map 102, Lot 32

Zoning District: Waterfront Business

Description: Use an existing structure as a dwelling unit, relocating stairs, and adding a dormer and two 19± s.f. entrance overhangs.

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

- a) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance;
- b) from Section 10.440, Use #1.10 to allow a single family dwelling where the use is not allowed in this district;
and variances from Section 10.311 and Section 10.531 to allow the following:
 - c) a lot area of 11,327± s.f. where 20,000 s.f. is required;
 - d) 67'± of continuous street frontage where 100' is required;
 - e) a 4.1'± front yard where 30' is required; and
 - f) a 0'± side yard where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin was present on behalf of the applicant to speak to the petition, and he introduced the owners the Thompsons. He reviewed the petition, noting that what was requested was a use similar to a garden cottage under the ADU Ordinance. He said that dwelling units were not permitted in the Waterfront District, so a use variance was required. He said the owners wanted to convert a work shop to a dwelling unit and add a kitchen. He noted that, out of the 32 lots in the neighborhood, only two were used for waterfront business. He reviewed the criteria.

Mr. Parrott asked about the applicable parking requirements, noting that there wasn't much parking space. Attorney Loughlin replied that 1.3 parking spaces were allowed per dwelling unit and that four spaces could fit in that location. Mr. Parrott said the use wasn't allowed. Chairman Rheaume said that four parking spaces would make sense if the property was zoned residential. It was further discussed. Mr. Parrott said his point was that parking spaces were not addressed in the ordinance because it was a non-allowed use and that the Board had to go by the ordinance.

Mr. Stith said the existing house would have two parking spaces and that the new dwelling would have one. Vice-Chair Johnson noted that a residential use would have to meet residential parking requirements. Mr. Parrott asked about requirements relating to backing out into the street, and it was further discussed.

Chairman Rheume said the 1980 property tax map showed the frontage as 96 feet, yet the applicant indicated that it was only 67 feet. Attorney Loughlin said he used the dimensions on the present tax map but that there was less frontage when the property was surveyed, and the lot size was 1,000 feet more than what the tax map showed.

The zero-foot setback was discussed. Chairman Rheume said it was almost like a negative setback because the structure went over the water line. Mr. Stith said that Salter Street was four feet, the right side setback was zero feet, and it went over the mean water line.

Chairman Rheume noted that there were no floor plans provided and asked what would be on the first and second floors. Mr. Thompson said he was working with the Building Department about what type of internal stairs to put in. He said the top floor would have a bedroom and bath, and the second floor would have a kitchen. He said the total square footage between the two floors would be less than 600 square feet.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING, TO, FOR, OR AGAINST THE PETITION

Marsha McCormick of 53 Salter Street said her concern was that the structure would be another residence. She asked what would be permissible on the street that was still waterfront business and if the project would create the potential for a restaurant or similar projects.

Mr. Thompson said their property was divided and that two units were combined, and that the usage on the street had become less intense. He said they would increase it by one or two people.

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

DECISION OF THE BOARD

The Board discussed the setback and whether the structure was an Accessory Dwelling Unit (ADU) or a single-family dwelling. Mr. Mulligan said the dimensional relief was based on existing conditions and that the project came down to a use variance for a second residential dwelling in a neighborhood that had evolved into a residential area.

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

Mr. Mulligan said the dimensional relief was self-explanatory, based on the existing conditions, and that there was no physical change to the property proposed. He said it came down to a use variance and whether or not it was appropriate to have a secondary residential use on the property. He said he thought it was and that it was the same policy as ADUs. He said that granting the variances would not be contrary to the public interest and would observe the spirit

of the ordinance because the essential character of the neighborhood would not be altered and the public's health, safety, or welfare would not be affected. Substantial justice would be done because the project was a modest amount of living space added to a large property. He said the values of surrounding properties would not be diminished. He said the hardship was that the lot was unique compared to other properties in the neighborhood because it was surrounded by water on two sides and was at the end of a dead-end street. He said it was a fairly large property that didn't lend itself to permitted uses in that zone and that he saw no fair and substantial relationship between the purpose of the uses permitted in the Waterfront Business zone and their application to the property. He said the proposed use was a reasonable one that met all the criteria and that it should be granted.

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

Chairman Rheume said he would support the motion. He noted that the Waterfront Business District was an odd one and that many of the properties didn't fit the idealized waterfront business concept due to constraints such as access on narrow streets, property value increases, and so on. He said if the property currently had a business use, he would be more defensive of it, but since it had a successful history of being a residential property, he was in approval.

*The motion **passed** by unanimous vote, 7-0.*

Mr. Mulligan recused himself from the petition.

5) Case 12-5

Petitioner: 56 Middle St LLC

Property: 56 Middle Street

Assessor Plan: Map 126, Lot 19

Zoning Districts: Character District 4L-1 and the Downtown Overlay District

Description: Restore the property to a single family home,

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

- a) from Section 10.642 and 10.5A32 to allow a residential principal use on the ground floor of a building; and
- b) from 10.5A41.10A to allow a 1.7'± rear yard where 5' is required.
- c) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance;

SPEAKING IN FAVOR OF THE PETITION

Attorney Tom Watson was present on behalf of the applicants to speak to the petition. He discussed the building's history and said the owners wanted to restore the building to a single-family residential use. He noted that they also wanted to replace the one-story office space in the

back with a two-car garage, including a bedroom suite on the second floor. He reviewed the criteria and said they would be met.

In response to Mr. Hagaman's questions, Attorney Watson said there was a part of the building that was currently used as office space, that the owners intended to keep the outside of the building similar to what it currently was, and that there were mixed-use commercial businesses along State Street that were near the property.

Chairman Rheume noted the easement rights that would allow access to the back garage over neighboring lots. He asked how vehicles would get to the garage. Attorney Watson explained how a public right-of-way that the applicant had rights to use.

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. Formella moved to **grant** the variances for the petition as presented and advertised, and Vice-Chair Johnson seconded.*

Mr. Formella noted that it was a self-explanatory request for a use variance for residential on the first floor. He 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 a residential use on the first floor would not alter the essential character of the neighborhood, pointing out that it was on the edge of the Downtown Overlay District and that there were residential uses nearby. He said it looked like a residential use and wouldn't threaten the public's health, safety, or welfare. He said that granting the variances would do substantial justice because the loss to the applicant would outweigh any gain to the public. He said there was no evidence to suggest that the value of surrounding property values would not be diminished. He said the hardship was that there were special conditions about the property, including that it was on the edge of the Downtown Overlay District and was originally built as a single-family home. He said the Board was sort of restoring the property to its original purpose, so there was no real and substantial relationship between the purpose of the use limitation to maintain economic vitality of the area. He said the proposed use was a reasonable one and should be approved.

Vice-Chair Johnson concurred with Mr. Formella, noting that it was important to recognize that there were transition buffer zones in hard-lined zones and that the Downtown Overlay District had the same perimeter as the property. He said it was an intangible line, not a hard line, and noted that properties went both ways on either side of the overlay. He said it was a perfect place for the use and that the project should be approved.

Chairman Rheume said he would support the motion, noting that the new addition with a garage was a modest addition and that, even though it was a tight setback, it was a very short distance and wouldn't affect the public's light and air.

*The motion **passed** by unanimous vote, 6-0.*

V. OTHER BUSINESS

There was no other business.

VI. ADJOURMENT

*It was moved, seconded, and passed by unanimous vote to **adjourn** the meeting at 9:40 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary