

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

7:00 P.M.

February 20, 2019

MEMBERS PRESENT: Chairman David Rheume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) January 15, 2019

*It was moved, seconded, and passed unanimously to **approve** the January 15, 2019 minutes as presented.*

Mr. Mulligan recused himself from the petition. Chairman Rheume announced that both alternate Board members would be voting that evening.

II. OLD BUSINESS

A) Request for Extension regarding 686 Maplewood Avenue.

Chairman Rheume noted that the petition was approved in February 2017 but that the applicant couldn't do all the work necessary to get the building permit in the two-year timeframe and was requesting a one-year extension.

*Vice-Chair Johnson moved to **grant** the extension, and Mr. Lee seconded.*

Vice-Chair Johnson stated that it was standard practice to approve a first-year extension and that he knew that the applicant was doing his due diligence in trying to complete the project.

Minutes Approved 3-19-19

Mr. Lee concurred with Vice-Chair Johnson and had nothing to add. Chairman Rheume said he also supported extending the request.

The motion passed by unanimous voice vote, 7-0

III. PUBLIC HEARINGS – OLD BUSINESS

Mr. Mulligan remained recused.

2) Case 1-2

Petitioners: Katherine Balliet & Carol Hollings, owners and Lisa Koppelman and Nicholas Cracknell, applicants
Property: 11 Meeting House Hill Road
Assessor Plan: Map 103, Lot 59
Zoning District: General Residence B
Description: Move one existing dwelling unit to a garage with added second story and a connector to existing home.
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 48%± building coverage where 30% is the maximum permitted;
b) from Section 10.521 to allow a 5.5'± rear yard where 25' is required; 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.

Chairman Rheume read the petition into the record.

SPEAKING TO THE PETITION

Attorney Duncan MacCallum approached the podium and inquired about Fisher vs. Dover. Chairman Rheume stated that the Board had last-minute information provided by some of the abutters and briefly explained what Fisher vs. Dover meant. He noted that the previous owner applied for variances in 1980 and was granted some of them. The Board discussed it at length, noting that setback relief for a garage was different due to the size of modern vehicles, the applicant was a different owner in a different timeframe, and the present proposal was very different from the 1980 one. Chairman Rheume noted that 40 years had passed and that the Board would judge Mr. Cracknell's petition by the existing character of the neighborhood.

There was no motion to invoke Fisher vs. Dover.

The applicant Nicholas Cracknell was present to speak to the petition. He asked for additional time for his presentation.

It was moved, seconded, and passed unanimously to allow an additional five minutes for the presentation.

Mr. Cracknell reviewed the petition in great detail. He noted that they had been before the Historic District Commission (HDC) for two productive work sessions.

Attorney John Bosen was present on behalf of the applicant. He explained that it might be the last opportunity to renovate the Drisco House and the unsightly garage. He reviewed the variances and criteria. He noted that there were two letters of support in the Board's packet. He emphasized that the special conditions included the fact that the corner lot was unique and oddly shaped and that nothing could be done to the lot without seeking relief from the Board.

Mr. McDonell asked Mr. Cracknell how tall the proposed garage was compared to the Drisco House and the house behind the garage on Manning Street. Mr. Cracknell said that the Drisco House was about 21 feet tall and the barn structure would be 2-3 feet taller than the house. He said the home on Manning Street was one or two feet shorter. Mr. McDonell said the barn structure seemed taller than the two adjacent structures because the hill peaked in that area. Mr. Hagaman asked why Mr. Cracknell decided not to go with a similar footprint or identical setback to the rear yard or build a smaller structure. Mr. Cracknell said the existing volume of the garage was too small to be able to open it up and allow enough room for parking modern vehicles.

Chairman Rheume noted that the Board had several emails and letters both in favor and in opposition that they had previously reviewed. He then opened up the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Ken Sullivan of 40 Howard Street read a letter from the architect Richard Shea in support of the project. Mr. Sullivan said he was also supportive of the project because it would be a great improvement for the neighborhood and would not negatively affect views, light, and air.

John Samonis of 111 Bow Street said he was a local real estate broker and thought the project would be a major improvement to the property and the neighborhood and would not have a detrimental effect to the value of surrounding homes.

Dave Witham of 238 Walker Bungalow Road said he was a design consultant for the project and felt that it would not change the essential character of the neighborhood. He noted that there were three similar structures within a minute's walk from the proposed structure. He said the project was respectful of the neighborhood's scale and mass and its historic context.

Bruce Erickson of 35 Salter Street said he owned two properties in the south end that were controversial when he made renovations to them, so he understood the issues. He said the applicant's project was well thought out and would be a benefit for the community.

Elaine Boucas of 12 Meeting House Hill said she lived next door to the large 19th-Century barn. She said it was a great project that would be an asset to the neighborhood.

Kristen Petersen of 51 Islington Street said she was a realtor and thought the project would be an improvement to the neighborhood. She also read a letter from Kathy Kane of 337 Pleasant Street that was in support of the project and that it would greatly improve the neighborhood.

Carol Hollings said she was the co-owner of the Drisco house and supported the project, noting that she and her sister couldn't afford the maintenance and all the necessary repairs and that the applicants would ensure the restoration of her family's house.

Zachary Gregg of 13 Salter Street said the setbacks didn't work in the south end and thought the garage had to be demolished. He said he couldn't imagine a more thorough or thoughtful person than Mr. Cracknell to do the renovation and said he wholly supported the project.

Liz Levey-Pruyn of 35 Salter Street said she was a realtor and was in favor of the project and thought the Drisco House and the barn would be in keeping with the historic character of the neighborhood and would improve surrounding property values.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Duncan MacCallum said he represented 16 neighbors who lived in the site's vicinity. He stated that the property was already over the limit in density; that the rear setback was already 7.5 feet from the property line and that the applicant wanted to reduce it further; and that the neighborhood itself was already crowded. He said the applicant could use the property in a reasonable manner without the variances.

Chris Brodeur of 51 Manning Street said he was a direct abutter and bought his property based on the way it was laid out, thinking the zoning ordinance would prohibit the open area from being built on. He said the project would affect his light, air, and property value.

Sandra Gosser of 260 Marcy Street said she was a direct abutter and thought the applicant's design took advantage of income opportunity rather than making the property more compatible with the neighborhood. She also thought three parking spaces weren't necessary.

Mary Beth Herbert of 112 Gates Street said she did not support the variances because the project was too big for the location and the structure's mass would overwhelm the corner.

Peter Whelan of 100 Gates Street said the applicant's property was on top of the hill surrounded by historic homes and felt that the renovation shouldn't be a brand new structure. He said the proposal was all about money. Vice-Chair Johnson asked how Mr. Whelan felt about the garage. Mr. Whelan said the garage was in disrepair and was in that location because neighbors who restored the south end in the past had fought another large building on that corner. He said someone could buy the house and make a beautiful home out of it, so there was no hardship.

Paige Trace of 27 Hancock Street said the Drisco House was a beautiful example of existing architecture that someone could retain as a single-family home. She gave the Board a copy of the 1981 Board decision. She also thought the corner presented a safety issue.

Peter Harris of 46 Manning Street said he was a direct abutter had a signed petition from 30 neighbors. He said the barn project was too large and not respectful of the direct abutters. He said it would have a negative impact on his home's value. He noted that the 1981 Board decided that the requested variances exceeded the current structure.

Esther Kennedy of 41 Pickering Avenue said that most people came to Portsmouth to walk along the south end streets. She said the presence of several realtors in favor verified her concern that the project was too big and outside the original footprint. She said the Board had to decide if the neighborhood would remain historic or if it would be allowed to be built out.

Mark Brighton of 25 Union Street said he was an appraiser who felt that he wasn't qualified to state, like other agents, whether the project would negatively affect surrounding properties or not. He said the project might add value but that it also might not be the case.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Duncan MacCallum said there was no hardship and nothing unique about the property to request a variance. He felt the applicant simply didn't want to comply with the zoning ordinance. He said there would be safety, traffic, and parking problems, too much mass and density, and diminution of surrounding property values. He said the Board would set a precedent if they granted the variances and that other owners might want to overbuild. He reviewed the criteria and explained how the project wouldn't meet any of them.

Ken Sullivan of 40 Howard Street noted that ever property in the south end was in violation of the zoning in some way, yet Mr. Cracknell was faced with the only property held to the zoning ordinance's constraints. He emphasized that it was the nature of the neighbor's character of houses close together that made people want to walk around the area. He said the garage was an eyesore and that the corner had more of a sightline than almost any other corner in the neighborhood. He gave two more letters of support to the Board.

Chris Brodeur said the project was new construction.

Charles Griffin said he was the Chair of Newburyport Architects and was in favor of the project. He said he knew Mr. Cracknell's character and that he wasn't trying to do a 'money grab' but was a decent individual who wanted to live in the building and take care of a hideous site. He noted that only 20% of the houses in the neighborhood conformed to the zoning.

Peter Harris said the project was just too big. He referred to the list of abutters who opposed the project. He gave the Board a photo taken of the garage piled up with snow. He said the garage would need a foundation to allow utilities and that blasting might be necessary.

Mr. Cracknell explained that three-quarters of the other properties in the area didn't meet the coverage standard. He reviewed the view, light, air, and setback issues and said his project would have a positive impact on property values. He said the proposed structure would be set back several feet to allow a sightline. He explained why the proposed structure wasn't a massive building and said the garage wouldn't be different whether it had three doors or two. He said the lot did not look like every lot in the neighborhood and that his project was proportional to the original Tuckerman house; the design was very different from the 1981 proposal and that the ordinance had changed since then; and there was an existing garage foundation that wouldn't require blasting.

Attorney Bosen said that Mr. Cracknell did not want to make money but simply wanted to maintain the two-family use in a code-compliant way.

Peter Harris said the proposed structure and the Tuckerman house did not sit on the same footprint and that blasting would be necessary.

Attorney MacCallum said the rear setback of 25 feet from the property line was established.

Mr. Cracknell said the front was decided by the address of the house and that he was asking for two feet of relief.

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

Chairman Rheume called for a short break. He then noted that there were several other cases and recommended addressing Cases 2-1, 2-2, and 2-5 that evening and postponing the other cases to the Tuesday, February 27 meeting. The Board members agreed.

DISCUSSION OF THE BOARD

The Board discussed the petition at length. Mr. McDonell said there was no question that the case was driven in part by economics, but he thought the applicant was trying to restore the house and rebuild the garage in a way that worked. He noted that the specific relief asked for was more than what was allowed and prompted the neighbors' concerns about safety and sightlines, which he understood but said the Board wasn't requested to grant relief from either of the front setbacks. He said the offsite parking would help keep the cars off an already congested street. He said the Board had gotten conflicting testimony about whether the proposed structure would decrease the abutter's property value, but nothing conclusively showing that it would. He realized that the concern of the large structure causing a precedent for similar proposals in the neighborhood was shared by many opponents but pointed out that the existing historic structure would be restored and the dilapidated garage would be replaced by something more in keeping with the neighborhood's character. He said the barn was a bit more massive than the Drisco House but was offset by the Meeting House, which was gigantic compared to the other structures.

Mr. Hagaman said a 7-ft offset from the secondary front yard was allowed, so the real issue was the coverage and what was deemed the rear yard, but it was a corner lot. He said the property had

unique characteristics that spoke to the hardship. He said if the owner subdivided the lot, it would require variances to put anything on it. He said the applicant's requests for relief were reasonable in terms of the 2-ft increase in the rear offset and the slight increase in building coverage, based on the issues with the property itself and what currently existed. Mr. Parrott said the concerns about setting a precedent were understandable, but in all his years on the Board he had never heard anyone make an argument that the Board had to approve something that night because in the past they approved something else. He said that what the Board did was not precedent setting because two properties could be similar but there was no such thing as two identical properties. He said the two requested variances were small and specific. Ms. Eldridge concurred and said it was unusual for the Board to get such minor variances and yet have such an impact on the neighborhood. She noted that such issues as blocking the sunlight and blasting were not in the Board's purview and thought the massing was more of an HDC issue.

Vice-Chair Johnson concurred with the comments. He said the lot was unusual and had a few hardships. He noted that the term density was misused because there were two lots that were not increasing, except for a slight increase in setback and coverage. He said that the location and nature of the lot in juxtaposition to some of the properties figured as well, noting that the Meeting House property, parking lot, and Water Street allowed some room for the Board to allow a small request. He thought it was appropriate that the proposed new building would look like a new building and respect the existing house and that the addition would not detract from the main house, which could stand on its own merits.

Chairman Rheume said that any necessary blasting would be a temporary issue that the Board did not control. He said the Board existed because they recognized that the zoning ordinance was imperfect. He noted that the City Council did the best they could to make generalities on what zoning should look like in an old city like Portsmouth and that he didn't think the south end was more precious than everything else as far as zoning. He said the Board looked at specific cases on their individual merits and didn't do precedents. He pointed out that there were smaller and larger buildings in the neighborhood and that the HDC was scrutinizing the project as well. He said the he didn't find that the proposal would make a large imposition on neighboring properties, no more so than another development. He said the applicant wasn't asking for much in terms of total lot coverage and setback. He also noted that parking was an issue for the south end and that the applicant would provide off-street parking that would benefit the neighborhood.

DECISION OF THE BOARD

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

Vice-Chair Johnson said he would echo all the previous comments. He said the HDC had a tight grasp on the project and was concerned with massing and volume effects on adjacent properties. He said that, in the current age of development, every project was a balance of economics and that the Board was always asked to weigh the economic impacts of a project. He said that granting the variances would not be contrary to the public spirit and would observe the spirit of the ordinance. He said the tasteful design was for a two-unit property that would replace a secondary building and would work well with surrounding properties. He said the way the

property was sited on the corner would allow for plenty of light and air, especially in that neighborhood. He said it was a densely built area by nature and felt that the design was not overreaching. Granting the variances would do substantial justice because the two units would stay the same use, the property would be upgraded, the garage structure would be a larger building but not overwhelming, and some parking would be taken off the street. He said he didn't agree with the safety and traffic issues because the nature of the neighborhood drove the traffic, and that corner was similar to others in the neighborhood and also had more relief from the side yard. He said the value of surrounding properties would not be diminished because the property would be improved and the rebuild would not be overbearing. He said the upgrade would prove to increase values of surrounding homes. He said the property had special conditions, including a larger lot, a larger corner in a densely packed neighborhood, and an unusual property line that drove the configuration. He said the proposed use was reasonable.

Mr. Hagaman concurred with Vice-Chair Johnson, adding that the HDC had review authority and the applicant was willing to work with them in modifying the plan. He said he initially had a concern about public safety but then realized that the proposal met the requirements of the secondary front yard offset. He said the requests were modest relative to what currently existed on the property.

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

*It was moved, seconded, and unanimously passed to **suspend** the 10:00 meeting end rule.*

IV. PUBLIC HEARINGS – NEW BUSINESS

Mr. Mulligan remained recused.

1) Case 2-1

Petitioners: Frank AJ Veneroso and Roslyn Weems

Property: 53 Austin Street

Assessor Plan: Map 127, Lot 26

Zoning District: General Residence C

Description: Proposed Inn

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

- a) from Section 10.440, Use #10.30 to allow an Inn in a district where the use is not permitted in the district.

SPEAKING TO THE PETITION

The applicant Roslyn Weems was present to speak to the petition. She said she had lived at the property for 16 years and had seen a lot of changes in Portsmouth. She said she wasn't against progress but believed that residents had a responsibility to preserve values, history, and

architecture, and for that reason, she and her co-applicant Mr. Veneroso decided to keep the historic property and use it as an inn rather than sell it. She noted that the home was one of the few remaining historic and intact single-family homes in Portsmouth and that operating it as an inn would make an incredible addition to the city.

In response to Chairman Rheume's questions, Ms. Weems said there was a main house connected to a 3-car garage, and a carriage house with three apartments connected to the garage. She said that she and Mr. Veneroso would live on the property in the largest of the apartments and would use the two remaining apartments and the main home's six bedrooms as an inn. She said she wasn't sure if breakfast would be included. She said there would be a place for people to check into the inn and that she would manage the property.

Mr. Parrott said it was a major change in that it introduced a commercial use in a residential area, and he felt there were lots of questions as to what the proposed inn would entail. He said signage was another issue. He said renting the two existing apartments with kitchens would not constitute just sleeping rooms. Ms. Weems said that the property had an existing sign and that the new signage would be historic and tastefully done. She also noted that an apartment or studio commonly found in hotels sometimes had kitchens. She said she had run an inn before and agreed that there were a lot of details but thought the first step was to get approved to be rezoned.

Vice-Chair Johnson said the applicant would have to go before the Planning Board for a Conditional Use Permit for parking. Mr. Stith said it was a non-residential use that would create more than five parking spaces, so the applicant would require a site plan.

Chairman Rheume asked Ms. Weems why she decided to make both the carriage house and main house an inn, as opposed to just having the main house as an inn and keeping the carriage house as apartments. Ms. Weems said it made sense to use as much of the property as possible.

SPEAKING IN FAVOR OF THE PETITION OR IN OPPOSITION OF THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Chris Mulligan said he lived directly across the street and that he wasn't opposed to the inn conversion but had some reservations. He said that, without the Staff Report, he'd have had no idea of the proposed parking or the number of rooms. He said it wasn't appropriate for the apartments to be converted into an inn or transient dwellings without doing some retrofitting for removing the kitchens. He said the application in general did not seem like it had been fully thought out. He thought that the applicant would comply with design regulations and that there was probably enough parking on site to satisfy the needs of the inn use, but he pointed out that the traffic on Austin Street could be problematic. He thought that the proposal would introduce more traffic problems but that the Planning Board would do a traffic study to gauge the impact. Chairman Rheume asked whether there were other inns nearby. Mr. Mulligan said there were a few on Islington Street but not on Middle Street.

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

DISCUSSION OF THE BOARD

Mr. Parrott said he was a former owner of some Austin Street properties and thought the proposal was significant and needed more development and details for the Board to take definitive action. He noted that the submission sheet didn't have the required dimensions. He said he had walked by the property and noticed that there were large cars parked that didn't look like they could make the turn into the parking places. He pointed out that there were no scaled drawings or setback information, which were required. He said the project wasn't a trivial one, like replacing a front porch. He emphasized that it was a very significant change of putting a substantial commercial use into a historic and residential property.

Vice-Chair Johnson noted that site plan reviews worked through issues to resolve them and that an approval from the Board would set things in motion so that the Board wouldn't necessarily see the petition again. He suggested that the petition be tabled so that the applicant could provide more information. Chairman Rheume said a significant relief was being requested and noted that an inn was a non-permitted use even in the mixed residential/office zone along Middle Street. Ms. Eldridge said she was troubled about the kitchen units. Chairman Rheume said he wanted to see something delineated for legitimate parking spots.

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **table** the petition until the March meeting and await further information from the applicant, with guidance from the Planning Department. Mr. Parrott seconded. The motion **passed** by unanimous vote, 7-0.*

Mr. Mulligan resumed his voting seat. Chairman Rheume recused himself from the petition, and Vice-Chair Johnson assumed his seat as Acting Chair.

2) Case 2-2

Petitioners: Keith Anthony Kohler and Nicole Gabrielle Lapierre
Property: 44 Rock Street
Assessor Plan: Map 138, Lot 19
Zoning District: General Residence C
Description: Demolish garage and deck and add 2 ½ story 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 5'± left side yard where 10' is required;
b) from Section 10.521 to allow 37%± building coverage where 35% is the maximum allowed; and

- c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

SPEAKING TO THE PETITION

Project designer Brendan McNamara was present on behalf of the applicant. He reviewed the petition and criteria and referenced some letters of support from the neighbors.

Mr. Hagaman said it seemed that the variance could be avoided for offset if the addition were narrower and longer. Mr. McNamara said they considered doing it narrower but the stairway was an issue and they would have had to cut into the rear yard.

SPEAKING IN FAVOR OF THE PETITION

Robin Husslage of 27 Rock Street said she was a neighbor and supportive of the change. She also thought that the parking situation would be improved.

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

No one else rose to speak. Acting-Chair Johnson closed the public hearing.

DECISION AND DISCUSSION OF THE BOARD

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

Mr. Mulligan said he thought it was unusual to see someone with an existing garage want to remove it and not replace it with a larger one. He said the garage was substandard and that the applicant would create a net benefit by shifting parking off the street. He said the project was a tasteful one that was not contrary to the public interest and would observe the spirit of the ordinance, and the neighborhood's essential character would remain the same as a dense, residential one. He said there would be no negative effect on the public's health, safety, and welfare. He said that granting the variances would do substantial justice because the loss to the applicant would outweigh any gain to the public if denied. He noted that the property was already over the lot coverage requirement and that the request was a minor increase, and the side yard setback would also be improved. He said the value of surrounding properties would not be diminished because the applicant would replace a substantial and unsightly accessory structure with a tasteful design, and the investment would improve the neighborhood and enhance property values. He said the special conditions were the corner lot, the existing built environment that was already nonconforming, and the unusually designed and small house, so there was no fair and substantial relationship between the purpose of the setback and lot coverage ordinances and their application to the property. He said it was a reasonable use, a 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.*

It was moved, seconded, and passed by unanimous vote to take Case 2-5 out of order.

3) Case 2-3

Petitioner: Stephen G. Bucklin
Property: 322 Islington Street
Assessor Plan: Map 145, Lot 3
Zoning District: Character District 4-Limited-2 District.
Description: Move existing carriage house to a new foundation and add one-story connector to the existing house.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from the following:
a) from Section 10.5A41.10A to allow a 1'± rear yard where 5' is required;
b) from Section 10.5A41.10A to allow a 2'± left side yard where 5' is the minimum required; and
c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

*The petition was **postponed** to the February 26, 2019 meeting.*

4) Case 2-4

Petitioner: Carrie Richesson
Property: 101 Martha Terrace
Assessor Plan: Map 283, Lot 5
Zoning District: Single Residence A
Description: Construct a 20'± x 24'± garage attached to the existing house by a 10'± x 10'± mudroom.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances from Section 10.521 to allow the following:
a) a 12'± secondary front yard where 30' is required; and
b) 16%± building coverage where 10% is the maximum allowed.

*The petition was **postponed** to the February 26, 2019 meeting.*

Mr. Mulligan recused himself from the petition and left the building. Chairman Rheaume resume his seat and Acting-Chair Johnson resumed his seat as Vice-Chair.

5) Case 2-5

Petitioners: Ryan P. and Jennifer L. Smith
Property: 7 Laurel Court
Assessor Plan: Map 212, Lot 191
Zoning District: General Residence B
Description: Equitable Waiver for rear and front yard encroachments.
Requests: An Equitable Waiver under RSA 674:33-a to allow a previously constructed bulkhead with a 22'± rear yard and a previously constructed bulkhead with a 24.7'± rear yard where 25' is required for each and to allow a 4'± front yard where 5' is required.

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant and distributed photos of the property to the Board. He reviewed the petition, noting that all the encroachments existed in 2013 but the owner had not known that when he bought the property. He said the violation was a good-faith error made by the builder at the time and wasn't discovered until 2019. He said it would be equitable to correct all the violations and thought the criteria were met.

Mr. McDonell asked what it would cost to correct the mistake. Attorney Bosen said it would be significant because a structure would probably have to be removed. Chairman Rheaume asked if the Ambit Engineering survey was done after the plot plan, and Attorney Bosen agreed.

SPEAKING IN FAVOR OF THE PETITION

Rosalie Powell Andrews said she was a realtor for the buyer and present on his behalf. She said they were ready to move forward and asked the Board to grant the waiver.

**SPEAKING IN OPPOSITION TO THE PETITION 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 waiver for the petition, and Mr. Lee seconded.*

Mr. McDonell said the Board had to make certain findings to grant an equitable waiver. He stated that, first, the violation wasn't noticed or discovered by an owner, agent, representative, or any municipal office until after the structure was completed, noting that it was discovered when trying to sell the property. Second, he said the violation wasn't the outcome of ignorance of the

law, bad faith, or any other misrepresentation on the part of anyone and was instead an error in measurement or calculation made by the builder. He said that third, the Board had no evidence that the violation constituted any public or private nuisance or diminished the value of another property in the area or interfered or adversely affected any present or permissible future uses of the property. He said the fourth criteria was that the cost of correcting the error far outweighed the public benefit to be gained that it would be inequitable to require that it be correct. He said the Board didn't get a clear idea of what it would cost to correct but did not see evidence of a public benefit to be gained by requiring the compliance. He said that all four criteria were met and that the waiver should be granted.

Mr. Lee concurred with Mr. McDonell, adding that in his 38 years of selling real estate, those 'loopsies' were common and easily fixed.

The motion passed by unanimous vote, 7-0.

6) Case 2-6

Petitioners: Vaughn Family Revocable Trust, Charles & Sally Vaughn, Trustees, owners, and Craig and Diane Alie, applicants
 Property: 50 Pleasant Point Drive
 Assessor Plan: Map 207, Lot 11
 Zoning District: Single Residence B
 Description: Second story addition and new two-story garage.
 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 an 18'± secondary front yard for a vertical expansion of the existing dwelling where 30' is required;
 b) from Section 10.521 to allow a 21'± secondary front yard for a new two-story garage where 30' is required; and
 c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

The petition was postponed to the February 26, 2019 meeting.

7) Case 2-7

Petitioners: Neil A. Fitzgerald Family Trust, Kara Moss and Linda Fitzgerald, Trustees
 Property: 226 Park Street
 Assessor Plan: Map 149, Lot 50
 Zoning District: General Residence A
 Description: Rear addition, single-story 410± s.f. detached accessory dwelling unit (DADU), and a detached one-car 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 lot area per dwelling unit of 4,368± s.f. where 7,500 s.f. is required per dwelling unit; and
 - b) 31%± building coverage where 25% is the maximum allowed.

*The petition was **postponed** to the February 26, 2019 meeting.*

VI. OTHER BUSINESS

There was no other business.

VII. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to **adjourn** the meeting at 11:15 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary