

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

**7:00 P.M.**

**March 19, 2019**

- MEMBERS PRESENT:** Vice-Chairman Jeremiah Johnson, John Formella, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman
- MEMBERS EXCUSED:** Chairman David Rheume
- ALSO PRESENT:** Peter Stith, Planning Department
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Chairman Rheume was absent, and Vice-Chairman Johnson took his seat as Acting-Chair.

**I. APPROVAL OF MINUTES**

**A) February 20, 2019**

*It was moved, seconded, and passed by unanimous voice vote to **approve** the February 20, 2019 minutes as amended.*

**B) February 26, 2019**

Mr. Parrott abstained from the vote.

*It was moved, seconded, and passed by unanimous voice vote to **approve** the February 26, 2019 minutes as amended.*

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**II. PUBLIC HEARINGS – OLD BUSINESS**

Mr. Mulligan recused himself from the petition.

**A) Case 2-1**

**Petitioners:** Frank AJ Veneroso and Roslyn Weems

**Property:** 53 Austin Street

Minutes Approved 4-16-19.

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.

Acting-Chair Johnson read the petition into the record. He asked for a motion to take the petition off the table.

*Mr. Parrott moved to take the petition off the table, and Mr. McDonell seconded.*

Mr. Parrott said it was a procedural vote and that he saw no reason that the Board should not hear the petition again that evening.

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

Acting-Chair Johnson asked for a motion to re-open up the public hearing.

*Ms. Eldridge moved to **re-open** the public hearing, and Mr. Parrott seconded. The motion **passed** by unanimous vote.*

### **SPEAKING IN FAVOR OF THE PETITION**

The applicant Roslyn Weems was present and stated that the requested designation was a variance to operate as an inn. She noted that she submitted a clearer parking map that included the setbacks and that she had no plans to change the existing apartments in the carriage house.

Mr. McDonell said he went by the property and had a hard time picturing five vehicles in the parking spaces he saw. Ms. Weems said there were three rental units and that the space could hold 4-5 vehicles. She said the space in front of the carriage house could accommodate six vehicles, with an additional space able to accommodate one vehicle. She said that spaces 5 through 9 would hold five vehicles, and the garage could hold three.

In response to Mr. Lee's question, Ms. Weems said there would be a total of eight livable units, including the apartments. Mr. Hagaman said the Staff Report indicated 14 spaces but that he saw a potential of twelve spaces. He asked if there were two other spots that were not acknowledged on the site plan. Ms. Weems said there were currently eight parking spaces and that they were adding four more spaces. Mr. Stith clarified that the requirement for the proposed use was 17 vehicles, so Ms. Weems was seeking a Conditional Use Permit (CUP) for the difference in parking that was required as opposed to what was provided. Ms. Eldridge asked whether a

kitchen impacted the definition of an inn. Mr. Stith said the separate units with kitchens would be like efficiencies but would still fit under the same definition as an inn.

Acting-Chair Johnson opened up the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Christopher Mulligan of 74 Austin Street said he lived directly across the street from the applicant's property. He noted that it was an application to convert four permanent housing units into short-term rentals and that, aside from some of the technical aspects, he felt it was important that the Board clearly and specifically articulate what the hardship was that supported the variance. He said there were several apartment and multi-family buildings in the neighborhood, and if the Board wasn't careful in stating what was unique about the applicant's property that established a hardship, a lot of people could apply with a similar petition and a lot of permanent housing could be converted to short-term and tourist rentals. He said the application didn't have a lot of substance and that stipulations would be important, otherwise it would have to go before the Technical Advisory Committee (TAC) and Site Review. He said his concerns about additional traffic would be addressed by TAC and that a traffic study would probably be done.

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

### **DISCUSSION OF THE BOARD**

Mr. Hagaman noted that the site plan revision still didn't seem to answer all the Board's questions. Mr. Stith said the Board had requested a more detailed site plan. Acting-Chair Johnson said they had asked for a parking site plan but that they had also commented on other issues that should have been specified more. He noted that the Board normally required a lot more information on applications with such a potential change of use. Mr. Parrott said it was a significant request because it posed a major change of use on a prominent and historic property. He said the amount of information before the Board was sketchy and noted that the reception sign-in area and signage were not shown on the plans. He said the Board was entitled to have more specifics on items that weren't in their purview so that they could make the proper determination. He said he walked around the property the day before and looked at it from all angles, and now he realized that he was lacking a lot of information in order to vote responsibly in line with the Board's five criteria. Mr. McDonell agreed. He said the property was the type that seemed to be well suited for the use, but that the Board would be approving a use for a number of VRBO (Vacation Rentals by Owner) units where people could come and go as they pleased. He said it wasn't dissimilar from an inn, which would work with the allowed use, or a traditional B&B without breakfast, but he thought that didn't seem to be what would happen, why might explain why the application wasn't more comprehensive. He agreed that the Board didn't have enough information, for example, how the reception area would work. He said he didn't want to send it back again but wasn't sure what the Board could do, short of denying it.

Ms. Eldridge asked how an inside reception area would affect the Board's decision, what the difference was between a VRBO and an inn, and whether zoning would be a factor. Acting-Chair Johnson said he had the same concerns, noting that there had been a lot of neighborhood commentary on previous short-term rentals or VRBOs that questioned safety and transient issues. He suggested that the Board ask for more information from the applicant and delay the application another month instead of denying it. Mr. Stith read the definitions of an inn and a B&B, stating that an inn 'shall not serve food to the public and is limited up to 15 rooms', while a B&B 'has an owner-occupied residence and serves breakfast to the guest.' He concluded that the main difference between a B&B and an inn was the number of rooms and that an inn did not have to be owner occupied. It was further discussed. Acting-Chair Johnson said he didn't understand the intent of the application. Mr. Hagan said he felt that the kitchen was irrelevant and that the main issue was whether the hardship would justify the variance.

Acting-Chair Johnson stated that the Board received a letter from the abutter Michael de la Cruz, who was concerned about the abundance of parking in front of the building and feared that it might be a detriment to the neighborhood from a visual standpoint.

## **DECISION OF THE BOARD**

*Mr. Parrott moved to **postpone** the application until the April 16, 2019 meeting. Mr. Formella seconded the motion.*

Mr. Parrott said he was also concerned about whether the application met the hardship requirement. He referred to the Board's previous comments about the reception area, signage, and the lack of the required number of parking spaces on the site plan. He said those issues had to be spelled out in regard to several of the Board's criteria and felt that a better argument could be made by the applicant than had been made so far.

Mr. Formella said he was concerned about hardship and would like the applicant to return with information on what distinguished her property from the other multi-family ones in the area, information on the property's history, and any other features that would make it suited to be an inn. He said if the Board didn't zero in on what distinguished the property from the other ones in the area, he didn't see how they could deny another applicant's request for an inn. He noted that Portsmouth was very desirable to tourists and that many residents could see more profit in running an inn. He also noted that the applicant's lot was bigger than most lots surrounding it, which could be a distinguishing factor. Mr. McDonnell agreed. He said he wanted a clear explanation of how the project met all the criteria, especially the hardship one. He suggested that floor plans be submitted to the Board to get a sense of how the reception area would work, whether food would be served, and how the inn would be advertised. He noted that a B&B had owner occupancy and wanted to know if the proposed inn would have something similar, otherwise he would have concerns about allowing eight or ten units in that type of neighborhood without a better sense of how it would work.

Acting-Chair Johnson said he also wanted information regarding the diminution of value in surrounding properties. Mr. Hagaman observed that the Board came close to stating that a precedent would be set with regard to other multi-family properties in the area. He said that wasn't the case and clarified that there was a lack of detail from the property to meet the criteria. Acting-Chair Johnson agreed but noted that it could increase the number of requests from people in the same situation.

Mr. Parrott, as maker of the motion, said he agreed with all the comments.

*It was moved, seconded, and **passed** by unanimous vote to **table** the petition to the April 16, 2019 meeting, with the following requests for additional information and clarification:*

- A clear explanation of how the proposed project meets all the criteria necessary to grant a variance including a more comprehensive narrative addressing how the hardship test is met with information on how this property is distinguished from other multi-family properties in the area.
- More information to support the argument that the value of surrounding properties will not be diminished.
- Information on the historic nature of the property and the specific features of this property that make it uniquely suited to support an inn use.
- Details on how the inn will function, with floor plans including the reception sign-in area, a plan for the proposed signage, food service and how the inn will be advertised.

Mr. Mulligan resumed his voting seat.

### **III. PUBLIC HEARINGS – NEW BUSINESS**

#### 1) Case 3-1.

Petitioners: Stacie A. Yonkin and Eric L. Moyer

Property: 196 Sherburne Avenue

Assessor Plan: Map 112, Lot 30

Zoning District: General Residence A

Description: Demolition and replacement of existing house. Existing garage and rear addition to remain.

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 32%± building coverage where 25% is the maximum allowed.
- b) 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 IN FAVOR OF THE PETITION**

The project contractor Matt Silva was present on behalf of the applicant. He said the owners originally wanted to rehabilitate the home but discovered that there were too many structural issues, so they had to demolish it. He clarified that the standard coverage was 25% and that they were at 32.1%. He reviewed the criteria and explained how they would be met.

In response to Mr. Hagaman's questions, Mr. Silva said the square footage was 964 square feet of total living space. He said the garage would stay the same and that they would not change any other part of the foot print. He said the new structure would be 1,984 square feet, with a total of 366 square feet being added to the overall space, with a small bump-out in the front of the house. He said they tried to keep to the setback but wanted long-term results so the family could live in the home for as long as possible. He said they couldn't make it too much tighter and make it sensible. Mr. Mulligan said that particular part of Sherburne Street may be a paper street and asked how the property would be accessed. Mr. Silva said it was a dead end and explained that there were three driveways after the applicant's property and that the access came in at a slight angle off one of the side streets. Mr. Parrott asked what the dimensional 36 feet on the plan related to. Mr. Silva said it was an error and that it should be 32 feet.

Acting-Chair Johnson opened the public hearing.

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

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

**DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variances for the application, and Mr. McDonnell seconded.*

Mr. Mulligan said the applicant discovered that the amount of renovation necessary to modernize the 100-year-old building wasn't worthwhile, so they proposed a partial demolition and rebuild. He said that, given the small lot area, he didn't think it was surprising that it was necessary to increase the building coverage for normal amenities. He said it seemed like a lot of relief but was reasonable. 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 altered, nor would the public's health, safety, and welfare be threatened by increasing the lot coverage as proposed. He said substantial justice would be done because there would be no benefit to the public that would outweigh the loss to the applicant if the variances were denied. He said granting the variances would not diminish the values of surrounding properties because the project was a tastefully-designed one that was code compliant and allowed modern amenities and would improve values. As for literal enforcement of the ordinance resulting in unnecessary hardship, he said the property had special conditions that included the small lot size, and the

applicant was working hard to stay within the existing footprint and not increase any setbacks, which were special conditions that distinguished the property from others. He also noted that it was unique that the property was accessed through a paper street or private driveway. He said there was no fair and substantial relationship between the purpose of the building coverage requirement and its application to the property. He said that part of Sherburne Avenue was actually benefiting from the applicant's property and that there was a lot more area in a practical sense than was technically there. He said the use was reasonable and met all five criteria.

Mr. McDonnell concurred, adding that the house would be reasonably sized and not huge. He said the only alternative would be to build upward, which would be do-able but not desirable and would impact other properties.

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

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## 2) Case 3-2.

Petitioners: Bethel Assembly of God, owner and Chase Drive, LLC, applicant  
 Property: 200 Chase Drive  
 Assessor Plan: Map 210, Lot 2  
 Zoning District: Gateway Center District (G2)  
 Description: Construct a mixed use building with office space and 21 residential units.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) from Section 10.5B33.20 to allow a front lot line buildout of 15% where 75% is required;
- b) from Section 10.5B34.80 to allow a 56', 5-story building where the maximum building height allowed is 50 feet and 4 stories;
- c) from Section 10.5B34.80 to allow 22%± façade glazing where 50% minimum is required; and
- d) from Section 10.5B22.20 to allow a 56' tall building to be within the set back and step back area.

Acting-Chair Johnson stated that the Board received supplementary information from the Planning Department, who advised them that the height issue should be addressed through a CUP with the Planning Board.

## **SPEAKING IN FAVOR OF THE PETITION**

Attorney John Springer was present on behalf of the applicant to speak to the petition. He stated that the applicant received the supplementary information and chose to withdraw the height variance and would not pursue the CUP. He reviewed each requested variance individually. Related to the variance for the front lot line buildout, he said they were proposing a mixed-use building that had frontage on three streets and that they chose Michael Soucy Drive. He said they

needed a variance for the two other streets. He reviewed the criteria. Related to the second variance for a minimum street facing façade glazing requirement, he said the amount of glazing they proposed was 22% because they felt that the glazing applied to more traditional downtown areas where there were more pedestrians. He reviewed the criteria and noted that the building had many windows and would be unattractive to a potential buyer if the windows had to take up 50% of the ground floor. He said the applicant's property wasn't the type of pedestrian environment that the setback and step back variance addressed, and he reviewed the criteria.

Mr. Hagaman asked what the percentage for frontage would be if the applicant re-oriented the building on Market Street. Attorney Springer said the front lot line would be 360 feet, which meant that the buildout would be 270 feet. He said that what they proposed was along Michael Soucy Drive, which was 159 feet, so the building would be under 120 feet. Mr. Hagaman referenced the glazing issue and asked if the applicant tried to revamp the design of the building closer to 50%. Attorney Springer said they felt that 50% of windows on the ground floor units was a lot and that, given the purpose of that provision, they thought 22% was sufficient.

In response to Mr. McDonell's question, Attorney Springer said the façade glazing calculation only pertained to Michael Soucy Drive. Mr. McDonell said there was a note on the sketch layout indicating that the plans were subject to change. Attorney Springer said the plan was close to being final. He said the setback was not required and that the maximum height was 50 feet tall all the way across. Mr. McDonell asked how much floor space would be lost if the floor had to be bumped back into the notch, and Attorney Springer said he didn't know.

Mr. Parrott confirmed that the roof was a flat one and noted that the rest of the roof area didn't show condensers. He asked whether there would be any. Attorney Springer said the roof appurtenance was for an elevator but didn't know what else was in that appurtenance. Mr. Parrott asked whether the 50-ft figure was from the ground floor to the major part of the roof. Attorney Springer said the fifty feet was measured from the average grade around the building to the top of the roofline, not including the roof appurtenance.

Acting-Chair Johnson noted that a lot of thought had been put into the substantial building but that the Board didn't have as many floor plans as they should have. He said there was no nomenclature on the drawing pertaining to the engineer's level, which was risky for the applicant because he would have to return to the Board for any footprint or design changes. He said a building of that size and scope required more detailed drawings.

In response to Mr. Hagaman's question, Attorney Springer said he didn't know which of the three streets would be the street address and thought the city would decide. Mr. Stith agreed and said the address would likely be Chase Drive. The parking lot and the way it was proposed to be subdivided was discussed. Attorney Springer said the applicant had to work with the church to save some parking for them. Mr. McDonell asked how high the retaining wall on Market Street would be. The project engineer Cory Belden rose to speak and said the wall was no more than 2-1/2 feet and that it might be eliminated altogether.



Acting-Chair Johnson opened the public hearing.

William Pierce said he was an abutter and was in favor of the petition because there was a housing shortage in Portsmouth.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Roger Gauthier of 36 Brigham Lane submitted two photos of the parking lot to the Board, noting that there were only three vacant parking spaces in the parking lot the day before. He said the applicant was asking for a subdivision more than a variance so that he could chop the area up in little pieces. He said the neighborhood was home to a lot of people and that the project would destroy it. He didn't think anyone would shop at the mixed-use building. He also noted that he got a final notice from the Planning Board that day and said there was no due process.

Mary Ann Gauthier of 36 Brigham Lane said the project would affect their property values and add 42 more cars to the neighborhood, which already had a lot of traffic.

Edward Richards of 435 Cutts Avenue gave a written statement to the Board, with photos. He said the City invested a lot of money into improving Market Street's appearance as a gateway and that the proposed building would block all the views from it, as well as block the views of several neighbors. He said the applicant's measurements were different from the ones he did and felt that the project would affect rainwater drainage and impact the tidal pond. He said the project would take away parking spaces that churchgoers used.

Jason Carlene of 29 Brigham Lane said he was in the process of buying a home and that his property would be impacted. He said the project would have a negative impact on direct abutters and that the proposed building's windows would look into the neighbors' windows. He said Chase Drive was pedestrian friendly and noted that the applicant didn't provide topographic information, shadow studies, or elevation drawings that were in context with the neighbor.

Alan (last name indecipherable) of 450 Cutts Avenue said he agreed with all the comments and thought the building was a monstrosity that would not enhance the neighborhood. He said the project did not stay true to the Master Plan and the Gateway zone.

Dianne Chalifour of 411 Cutts Avenue said that adding 21 residences would decrease property values due to congestion, parking, and trucks accessing the gypsum plant. She said the neighbors would lose their views and that people would park even further up in the neighborhood.

Kevin O'Brien of 20 Brigham Lane said the rainwater wasn't addressed, there were no details of what would be on the roof, and that the project was out of character with the neighborhood. He said there was no hardship and no reason to block properties with water views, and that traffic would back up because of the additional streetlights that would be required.

Marilee Clark of 461 Cutts Avenue said the school bus couldn't turn, there would be traffic problems due to the gypsum plant trucks, and that the building was too big for the area. Liz Condosta of 19 Brigham Way noted that the church parking lot was full on Sunday and feared that churchgoers would park on the neighborhood streets if the lot was cut in half. She asked where visitors to the Gateway project would park. She said a clearer proposal was needed.

Pastor Chad of the Bethel Assembly of God said the parking would be an easement, that the parish had considered all the turnarounds, and that there would be plenty of parking because the leased spaces would be discontinued. He said there was enough room for setbacks on Michael Soucy Drive and that the city had made provisions for water drainage. Mr. McDonell asked whether the parking lot easement would give the church the right to use it for church purposes or other uses. Pastor Chad said they couldn't rent out the parking lot but would allow people to park there if they needed to.

Jeff Ouellette of 550 Cutts Avenue said there would not be enough parking, especially on Sundays, and that the project would affect property values and quality of life.

Gloria Peacock of 355 Chase Drive said the project would devalue homes and block her views. She agreed with the safety and parking issues and suggested a smaller building.

Pastor Eric Grass noted that the church added another service and had parking lot attendances that could ease the traffic flow.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Edward Richards said the applicant didn't want to glaze one side of the building because they wanted to place residents there. He said the setback issue was a problem. He said the area was a new Master Plan zone that was forcing a building into it that belonged elsewhere, and that its approval would start a slippery slope. He said the project didn't meet any of the criteria.

Attorney Springer said they had a permitted use and height and that parking was a Planning Board issue. He said the drainage swale was in another area and that the structure was on top of the existing paved area, the building was over 100 feet from the wetlands, the glazing requirement was only 20%, and that they met the setback requirements. He noted that the neighboring house with the best view had a fence that blocked the view.

Edward Richards said the property fronted on city property and not on Michael Soucy Drive. He said that proposing to front it on Michael Soucy Drive didn't make sense and would be like having an abutting lot and claiming that you're fronting on a street.

Mary Ann Gauthier said she had the house with the fence and that the fence was at the basement level, with the living area above it.

Attorney Springer said the proposed area was not a separate lot but part of the right-of-way, so their frontage was on Michael Soucy Drive.

Jason Carlene said that the ordinance encouraged a walkable, mixed-use development, and that the new development would not enhance anything. He said that residential on the first floor would not be pedestrian friendly and that there was no hardship.

No one else rose to speak, and Acting-Chair Johnson closed the public hearing. Due to the late hour, he asked for a motion to split the agenda and postpone applications to another meeting.

*Mr. Mulligan moved to hear Cases 3-3 and 3-4 that evening and to postpone Cases 3-5 through 3-8 to the March 26, 2019 meeting. Mr. Lee seconded. The motion **passed** by unanimous vote.*

## **DISCUSSION OF THE BOARD**

Mr. Hagaman said a lot of good points were made that it wasn't a use variance but was for glazing and frontline buildout since the height was withdrawn. He said if the Board tweaked it and were to say it was a step back variance and allowed it, they should also require that it be with the presented setback so that there was no desire to build out the height of whatever the step back would have been to the edge of the lot line. He said the building's orientation was important, and he questioned whether the property owner had the right to choose Michael Soucy Drive as the orientation. He said it was such a new area of the zoning ordinance in the Gateway District and that the glazing aspect was important. Having less than half of the glazing requirement was an issue if the proposal was truly a mixed-use development. He said he wanted more detail on the easement so that he could understand the legal requirements, and he wanted to know the building height compared to the elevation of the nearby properties to see if the views were really affected.

Mr. McDonell said he agreed with Mr. Hagaman and felt that it was a tricky situation because it was a weird spot with a weird cutout of the new zone. He said if it was reasonable to question whether the proposal would be in keeping with the neighborhood, but if one looked at the proposal as a whole and saw all the pieces, like the residential neighborhood behind the church and the parking lot, the proposed structure wasn't imposing in the middle of the neighborhood but was really on the outskirts of a neighborhood in a zone where the use was permitted, so he had major concerns about the height variance and less concerns about the step back variance request. As far as the frontline building question, he thought the applicant was making a reasonable effort to comply with the ordinance but that the ordinance wasn't clear on what was required and felt that that what the applicant was proposing was less restrictive than it would be if they were trying to comply with a frontline lot line buildout on either of the other two streets. Pertaining to the façade glazing, he said if he bought the argument that the project was an outlier in the zone, it wasn't the kind of streetscape he'd want to walk down the street and see more than half of the façade glazed. He said the two issues were technical requests that he thought the Board would unfairly deny if they did deny them. He said he had trouble with granting the step back request but no concerns granting the other two requests. He also noted that the parking lot

was not a public one and that a lot of the neighbors' concerns were with issues that would be approved by the Planning Board or TAC.

Acting-Chair Johnson said the lot line buildout percentage indicated that the building wasn't big enough, so the variance indicated that the building wasn't as big in length as it should be and was significantly shorter than it needed to be. He said it was confusing. It was further discussed. Ms. Eldridge said she was concerned about how the project would meet some of the Board's statutory tests, like the public interest. She said the 21 units would greatly affect the traffic on that narrow street. She was also concerned about property values, not having enough information about impact on views, and the effect on the neighborhood. She said the new Gateway project was supposed to bring more pedestrians in, which the proposal didn't meet. Mr. Lee said he spent 38 years as a real estate broker and knew the proposal would have a serious impact on the values of the properties in that area and would be like building a wall. He said the spirit of the ordinance would not be observed. It was further discussed.

Mr. Parrott said the notes on the bottom of the sketches concerned him because they indicated that the building unit, window and door configurations were subject to change, so it may not resemble what eventually got built. He said the Board was supposed to use that as if it were in the public interest. He said it was a residential neighborhood because there were a lot of residences in that area, and the church was plunked down in it. He noted that churches were not allowed as a matter of right anywhere in the city, so he didn't look at it as a mixed neighborhood. He said there were definite boundaries – Market Street, the water, and the highway, and he thought the public interest was seriously challenged by the proposal. He said the values of the surrounding properties would be diminished because changes like that always affected a neighborhood. He said it was common sense that the neighboring properties would be negatively impacted by the large structure in what was essentially a residential neighborhood with a church in it, and he had a real problem with respect to those two factors.

Mr. Formella said he struggled with the fact that the City Council made a policy decision to zone the area the way they did and thus allow the use and permit it to be built. He said it made it harder to justify a deviation from dimensional requirements. He said it was a recent change, so it was tougher to make the hardship argument, but the applicant still had to show a hardship.

Acting-Chair Johnson said there were not many places for 21 units that weren't downtown that would not need a variance, and it was further discussed. Mr. Hagaman said he wanted more information on the easement and that the glazing still stuck out for him. Mr. Parrott said the drawings were sketchy and too vague and felt that the applicant could build it any way he wanted to, according to the note on the plans.

## **DECISION OF THE BOARD**

*Ms. Eldridge moved to **deny** the variances for the application. She said she felt that the project was contrary to the public interest and did not observe the spirit of the ordinance, and she*

*thought it might lower surrounding property values but that she didn't have enough information and needed more of a comparison. Mr. Lee seconded.*

Mr. Formella said he would vote against the motion to deny. He suggested tabling the petition instead. Mr. McDonnell said he liked the idea of tabling it so that he'd have more time to think through it. Acting-Chair Johnson agreed and said he would vote for a motion to table.

Ms. Eldridge withdrew her motion, and Mr. Lee agreed.

*Mr. Formella moved to **table** the application to the April 16, 2019 meeting, with the following requests for additional information to enable the Board to make a decision:*

- clear representation of the mass, materials and design of the proposed building.
- The changes resulting from reducing the proposed height of the building, including the impact on the number of proposed units.
- Elevations or computer generated depictions comparing the height of the proposed building to the height(s) of the neighboring structures.
- Information on the units per acre requirement and how that factored into the easement arrangement.
- The reasoning behind the easement to include, if possible, the actual language of the easement.
- Whatever additional information that would address the overall comments made and concerns raised by the Board during their discussion of the merits of the proposal.

*Mr. Hagaman seconded the motion. The motion **passed** by unanimous vote, 7-0.*

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### 3) Case 3-3.

Petitioners: Happy Dreams, LLC/Resport L.L.C. c/o Ocean Properties, LTD  
 Property: One International Drive  
 Assessor Plan Map 303, Lot 2  
 District: (Pease) Airport Business Commercial District.  
 Description: Encroachment of constructed foundation for hotel addition.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
 a) from Section 304.04(e) of the Pease Development Ordinance to allow a 49'± rear yard where 50' is the minimum required.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Doug McDonald was present to speak to the petition on behalf of the applicant. He noted that a memo was submitted that morning that provided information as to why Pease did not allow an equitable waiver. He said the Residence Inn wanted to expand their hotel but then

discovered that the foundation would encroach by seven inches onto Pease’s property. He reviewed the criteria and explained how they would be met.

Mr. Lee noted that the Board had a letter from Pease stating that they would authorize approval for the application.

Acting-Chair Johnson opened the public hearing.

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

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

**DECISION OF THE BOARD**

*Mr. Mulligan moved to **recommend approval** of the variance to the Pease Development Authority as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan said it was straightforward and noted that, in other circumstances, it would be a simple request for an equitable waiver, which the Board would normally grant, but because it was Pease, it was slightly different criteria. He said granting the variance would have no adverse effect on, or diminution of, values of surrounding properties because the encroachment was small on the setback and not noticeable from any of the other properties. He said the public wouldn’t have any interest in requiring the applicant to tear apart the already-laid foundation and rebuild it to be in compliance. He said the property’s special conditions were its significant green space and buffering and the fact that all the neighboring properties were essentially parking lots, so denial of the variance would be an unnecessary hardship to the applicant. He said that granting the variance would do substantial justice because there was no benefit to the abutters or the public that would be outweighed by the hardship to the applicant if the variance were denied. He said the proposed use was not contrary to the spirit of the zoning. He pointed out that the project had already been approved but that it was just slightly over what was originally considered. He said the essential character of the locality would not be changed.

Mr. Parrott concurred and had nothing to add.

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

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4) Case 3-4.

Petitioners: Samantha Finigan and Peter Gorman  
Property: 29 Sparhawk Street  
Assessor Plan Map 160, Lot 6  
District: General Residence A District

- Description: Construct a replacement rear deck with 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 28%± building coverage where 25% is the maximum allowed; and
  - b) 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 IN FAVOR OF THE PETITION**

The owner Peter Gorman owner was present and reviewed the petition. He said the old deck was unsafe and that the new deck would be 25% smaller and would not infringe on the neighbor's setback. He noted that the neighbor's letter of approval was submitted to the Board. He reviewed the criteria and said they would be met.

Mr. Hagaman asked if the lower level was a basement or living space. Mr. Gorman said it was a wet basement.

Acting-Chair Johnson opened the public hearing.

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

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

### **DECISION OF THE BOARD**

*Mr. Parrott moved to **grant** the variances for the application, and Mr. Mulligan seconded.*

Mr. Parrott said the project was a simple one – a proposed deck on a small house on a small lot in the middle of the backyard and as far as possible from the neighbors. He noted that the existing deck would be replaced by something smaller and with a different shape and would make the house more functional. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the project was straightforward and did not conflict with any purposes of the ordinance, did not change the characteristics of the neighborhood, and did not threaten the public's health, safety, or welfare or otherwise injury any rights. He said substantial justice would be done because it was a balancing test between the public benefit and the benefit to the homeowner, and he saw no public interest at all that would be injured and thought the project would be a good benefit to the owner. He said granting the variances would not diminish the value of surrounding properties because the request was to replace a derelict deck with something new and up to code and could only be a benefit for the owner and perhaps for the neighbors as well. He said that literal enforcement of the ordinance would result in unnecessary hardship because it was clear that the project would be a benefit to

the family, and the hardships included the fact that the property dropped off and that it was desirable to have another means of access or egress from a house, and outdoor living space was enjoyable for all. He said the application met the criteria and should be approved.

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

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

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5) Case 3-5.

Petitioners: Litchfield Portsmouth, LLC, owner, and New England Sporting Goods, LLC/  
Portsmouth Strategic Partners, LLC, applicants  
Property: 170 West Road  
Assessor Plan Map 252, Lot 2-14  
District: Industrial District  
Description: Sports training facility.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief  
from the Zoning Ordinance including the following:  
a) a special exception under Section 10.440, Use #442 to allow a sports training  
facility where a health club or similar use is allowed in this district by special  
exception.

**DECISION OF THE BOARD**

*It was moved, seconded, and passed by unanimous vote to **postpone** the petition to the March 26, 2019 meeting.*

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6) Case 3-6.

Petitioner: Noele M. Clews  
Property: 799 South Street  
Assessor Plan Map 132, Lot 24  
District: General Residence A District  
Description: Subdivide one lot into three lots.  
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 95'± continuous street frontage where 100'  
is required.

**DECISION OF THE BOARD**

*It was moved, seconded, and passed by unanimous vote to **postpone** the petition to the March 26, 2019 meeting.*



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7) Case 3-7.

Petitioners: Thirty-Six Ruby Road Trust, Phillip J. Stiles, Trustee  
Property: Thirty-Six Ruby Road  
Assessor Plan: Map 220, Lot 51  
District: Single Residence B District  
Description: Create a buildable residential lot.  
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 of 11,844± s.f. where 15,000 s.f. is required for each.

**DECISION OF THE BOARD**

*It was moved, seconded, and passed by unanimous vote to **postpone** the petition to the March 26, 2019 meeting.*

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8) Case 3-8.

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant, for property located at  
Property: 3110 Lafayette Road, Lafayette Road, and 65 Ocean Road  
Assessor Plan: Map 292, Lots 151-1, 151-2 and 153  
District: Single Residence B District  
Description: Merge lots and construct four story mixed use building containing 30 apartments and professional/medical offices.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
a) from Section 10.440 to allow professional, business and medical office uses where the uses are not allowed in the district;  
b) from Section 10.533 to allow a front yard setback 27' from the side line and 70' from the centerline of Lafayette Road where 30' from the sideline or 80' from the centerline is the minimum required;  
c) from Section 10.521 to allow a building height of 51'± where 35' for a sloped roof is the maximum allowed; and  
d) from Section 10.521 to allow a lot area per dwelling unit of 2,722± s.f. where 15,000 s.f. per dwelling unit is required.

**DECISION OF THE BOARD**

*It was moved, seconded, and passed by unanimous vote to **postpone** the petition to the March 26, 2019 meeting.*

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**IV. OTHER BUSINESS**

No other business was presented.

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**V. ADJOURMENT**

*It was moved, seconded, and passed by unanimous vote to **adjourn** the meeting at 10:50 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary