

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

**7:00 P.M.**

**July 16, 2019**

**MEMBERS PRESENT:** Chairman David Rheume, Vice-Chairman Jeremiah Johnson, Arthur Parrott, Jim Lee, Peter McDonell, Chris Mulligan; Alternate Chase Hagaman

**MEMBERS EXCUSED:** John Formella, Alternate Phyllis Eldridge

**ALSO PRESENT:** Peter Stith, Planning Department

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**I. APPROVAL OF MINUTES**

A) June 18, 2019

*It was moved, seconded, and passed by unanimous vote to **approve** the June 18, 2019 minutes as presented.*

Chairman Rheume stated that the applicant for 27 Thaxter Road, Petition 7-2, requested that it be postponed.

*It was moved, seconded, and passed by unanimous vote to take Petition 7-2 out of order.*

Chairman Rheume, Mr. Mulligan, and Mr. Parrot recused themselves from the vote.

*Mr. Hagaman moved to **postpone** the petition to the August 23, 2019 meeting. Mr. McDonell seconded.*

Mr. Hagaman said the Commission looked kindly on first-time postponements. He said it was wise to accept the request to postpone due to the limited number of voting members.

*The motion **passed** unanimously.*

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Chairman Rheume stated that alternate Mr. Hagaman would assume a voting seat on all petitions.

## II. PUBLIC HEARINGS – OLD BUSINESS

Mr. Mulligan recused himself from the petition.

### A) Case 5-5

Petitioner: 56 Middle Street LLC

Property: 56 Middle Street

Assessor Plan: Map 126, Lot 19

District: Character District 4-Limited and the Downtown Overlay District

Description: Convert to a duplex and construct rear addition.

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

- a) ~~from Section 10.5A41.10A to allow a building footprint of 2,646± s.f. where 2,500 s.f. is the maximum allowed;~~
- b) from Section 10.5A41, Figure 10.5A41.10A and Section 10.5A43.60 & Figure 10.5A43.60 to allow a duplex in the Downtown Overlay District where it is not permitted; and
- e) ~~from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.~~

*(This petition was postponed from the May 21, 2019 meeting and has been amended by the withdrawal of items a) and c). Relief is still required for item b.)*

Chairman Rheume asked for a motion to take the petition off the table.

*It was moved, seconded, and **approved** by unanimous vote to take the petition off the table.*

## SPEAKING IN FAVOR OF THE PETITION

Attorney Tom Watson was present on behalf of the applicant. He introduced Attorney Charlie Griffin, a member of 56 Middle Street LLC. Attorney Watson said he submitted the documentation that the Board requested. He said the properties had been encumbered by a deeded easement in favor of 56 Middle Street that included access and parking. He said one owner had a right to use parking spaces 8, 9, and 10, another owner could use parking spaces 11 and 12 and the rest of the parking spaces were the exclusive use of the 56 Middle Street owner. He said the three owners had right of access from the public accessway and that none would be impacted by the development. He reviewed the criteria and said they would be met.

In response to Mr. Hagaman's questions, Attorney Watson said there was no indication that any other tenant or property owner had the right to use parking spaces 1 through 7 as indicated on the 1980 plan, and that notices were posted for people who had parked there in the past. He said the easement seemed to infer that other tenants or property owners could park there after hours or on weekends, but the reality was that the times between 8 a.m. and 6 p.m. on weekdays only applied to the road and not the spaces. He said there was a time limitation on the drive. He said they would not change the uses of the accessway or the 495 State Street driveway.

Chairman Rheume said the additional information made him comfortable that the addition would be dimensionally identical to what was proposed for the previously-approved single-family dwelling. He noted that the 495 State Street property was a common exit for all the parking, and he asked if the owner would have the right on weekends and evening to park vehicles in it, seeing that it was the only exit way. Attorney Watson said that they could also go out on Middle Street. Chairman Rheume asked how the owners of the two new duplexes would access and egress from their spots Attorney Watson said the new owners could use the exit out to Middle Street, noting that there was nothing in the easements that would suggest that it was a one-way passageway. Chairman Rheume said the delineation of the parking spots seemed wide open and asked where the parking spots would be for the homeowners. Attorney Watson said the spaces would be re-striped and that there would be a new parallel parking spot.

*It was moved, seconded, and approved unanimously to **re-open** the public hearing.*

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

Pat Driscoll, the owner of 495 State Street, said he was concerned about snow removal and didn't think there was any hardship. He said he and the affected neighbors tried to work with the applicant, to no avail. He said a fourth owner would add more complexity and issues.

Steve Bergeron, owner of the office at 487 State Street, said the applicant was uncooperative in trying to resolve the vague easement language. He said the letter didn't address parking issues, and he felt that the parking would be pushed onto his property and diminish property values.

Chris Mulligan of 74 Austin Street distributed the December plan that was approved by the Board. He stated that, compared with the current application, only a few parking spaces on the corner of Middle and State Streets and two spaces in a garage were proposed, but now the parking on the corner of State and Middle was landscaped greenspace and the garage space would be replaced by living space. He said all the proposed parking would be at the rear of the property, with four of those spaces in the easement area in dispute. He said the lack of parking detail seemed spiteful, noting that there was never a parking conflict before because the law office at the time was open during the day and parking was available nights and weekends. He said the essential character of the neighborhood would be altered because of parking conflicts and substantial justice would not be done because the applicant already received one variance. He said the variance, if granted, would set in motion a permanent parking conflict that never

existed before when the building was a law office and under the approved December plan and would have a diminutive effect of values of surrounding properties.

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

Attorney Charlie Griffin said that the seven parking spaces were exclusive for his office staff and tenants when he had his law office and that his clients parked in the State Street parking lot. He said that Mr. Mulligan's claim to non-exclusivity could be applied to 495 State Street because the deed to the grants said people could use spaces 8, 9, and 10 but not have exclusive use. He said he showed the 1980 plan to Mr. Driscoll and told him he could use spaces 8 through 10. He said Mr. Driscoll had wanted to buy additional parking spaces but that he had refused. He said he paid the entire snowplowing bill at that time. He said he monitored the parking spaces and displayed notices. He said Mr. Mulligan never had permission to park in the law office parking lot at night. He concluded that none of the parking spaces could be shared.

Pat Driscoll said that after Attorney Griffin sold his ownership, they shared the snowplowing bills. He said spaces 8, 9 and 10 were on his property and listed in the deed. He said there was never a map registered with items written in the deed in 1980.

Attorney Watson said they were not being spiteful by using the spaces and not giving them up, and that they had tried to work something out, but the neighbors rejected it and wanted exclusive rights. He said the lots had been plowed for 35 years.

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

### **DISCUSSION OF THE BOARD**

Mr. McDonell said he understood the abutters' concerns because the project would change their current use of the parking lot, but he had trouble concluding that the owner of all the lots conveyed out 495 State Street and reserved an easement for certain things and granted rights to use spaces 8, 9, and 10 and the State Street driveway at certain hours, and then conveyed out 487 a few years later and did the same thing but gave exclusive use of spaces 11 and 12. He said it wasn't as ambiguous as some people thought it was. He said asked whether the Board of Adjustment was the appropriate venue to deal with the issue. He noted that the parking had existed for quite a while and would be changed, so he could see how that would alter the character of the neighborhood, but he felt that the argument about diminution of property values made less sense, seeing that a person wasn't entitled to use the property in the first place. Mr. Hagaman said he was torn because the application for a duplex affected all the property owners, and the applicant was removing the existing property on the State Street side. He asked how the issue of easement could be removed if it could impact abutting properties that had use of that easement. He said it also wasn't clear which spaces may or may not be exclusive.

Mr. Parrott said he thought the December variance had made sense, but the applicant was back with another petition that required a separate consideration but had the same criteria. He asked

what had changed that would argue that the December petition wasn't good enough. Chairman Rheume said the Board should be concerned about the parking in the sense that it was something that would allow them to be comfortable in saying that the strict interpretation of the Downtown Overlay District in terms of the duplex didn't apply. He said it was a convoluted situation involving easements but thought the applicant met the parking threshold. He said the exit way for the commonly-shared parking area during nights and weekends was fine when the building use was for business, but now it was a residence and the applicant had the right to ensure that the exit wouldn't be blocked for the residents. He noted that the Board previously accepted a single-family home, but now the applicant was requesting a duplex, so he struggled with the hardship. Vice-Chair Johnson said the exit and parking lot were used by five units and that he had no problem with the duplex use because the site was larger and in a mixed-use neighborhood, but the parking confused him because the use was now doubled and all the parking spots were removed, which could diminish the property values of at least two abutters.

### **DECISION OF THE BOARD**

*Mr. McDonell moved to **grant** the variance, and Mr. Lee seconded for discussion.*

Mr. McDonell said an argument had been made that the essential character of the neighborhood would not be altered, but he thought the better argument was that the neighborhood was still going to look the same -- a large parking lot with a lot of use in the back, and residential in a largely residential area. As to whether the potential restriction of the exit onto State Street would affect the public's health, safety, and welfare, he said there was no question that the intensity of use of the parking lot would increase if the property became a duplex. He said the easement granted to 495 State Street allowed them to park in the driveway during off-hours, but he thought the parties could work together. Relating to substantial justice, he didn't think the removal of parking for others would outweigh the applicant's right to build a duplex. He said he would incorporate his prior comments about the effect on the value of surrounding properties and wasn't convinced that the other properties would be devalued. As far as the hardship, he said the Board had to put aside the relief that was previously granted and say that the proposed use was a reasonable one. He said the property did have special conditions that distinguished it from others because it was larger, in a residential neighborhood, and was on the edge of the Downtown Overlay District that prohibited duplex use. He said the proposed use was a reasonable one.

Mr. Lee concurred, but said his level of support was lukewarm and that he was on the fence.

Vice-Chair Johnson said he would not support the motion because the petition failed on substantial justice and diminution of surrounding property values, which he felt were tied together as proposed. He said the project would potentially inconvenience two abutters, and the use could be applied for with a different layout that wouldn't inconvenience the abutters. He said there were other opportunities that could have made the project more approvable. Mr. Hagan agreed, saying he struggled as to whether the project was a reasonable use as presented by going from a single-family with an enclosed garage and main parking in the State Street parking lot to

a duplex and removal of all that parking. He said it could overburden the abutting properties and diminish their property values and felt that substantial justice was not done.

Chairman Rheume suggested stipulating that the Planning Department approve a traffic flow plan for the common parking lot in respect to reviewing all the easements. Mr. McDonell and Mr. Lee agreed.

*The motion was to **grant** the variance, with a **stipulation** that the Planning Department review the traffic ingress and egress plan for the shared parking regarding the known easements.*

*The motion **failed** by a vote of 2-4, with Mr. Lee, Vice-Chair Johnson, Mr. Hagaman, and Mr. Parrott voting against the petition.*

*Vice-Chair Johnson then moved to **deny** the variance, and Mr. Parrott seconded.*

Vice-Chair Johnson said he would refer to his previous comments. He said the application failed on the third and fourth criteria, Mr. Parrott concurred and had nothing to add.

*The motion to deny **passed** by a vote of 4-2, with Mr. McDonell and Chairman Rheume voting in opposition.*

### III. PUBLIC HEARINGS – NEW BUSINESS

Mr. Mulligan recused himself from the petition.

#### 1) Case 7-1

- Petitioners: Iron Horse Properties, LLC, Clipper Traders, LLC and Portsmouth Lumber & Hardware, LLC, owners, Ricci Supply Company, Inc. dba Ricci Lumber, applicant
- Property: 105 Bartlett Street
- Assessor Plan: Map 164, Lot 4-2
- District: Character District 4-W
- Description: Replace sign cabinets and panels, with bottom cabinet a digital changeable sign
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including :
- a) from Section 10.1212 to allow a sign as an accessory use to a permitted use on an adjacent lot;
  - b) from Section 1251.20 to allow a sign area of 142.33 s.f. where 20 s.f. is the maximum allowed for a freestanding sign;
  - c) from Section 10.1253.10 to allow a 25' tall freestanding sign where the

- maximum height is 12'; and
- d) from Section 10.1281 to allow a nonconforming sign to be altered, reconstructed, replaced or relocated without conforming to the ordinance.

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

Attorney Bernie Pelech was present on behalf of the applicant and introduced the applicants Mr. Hayes and Mr. Moretti. He said the request was to replace the existing panels that were internally illuminated, noting that one of the panels was proposed to be an LED changeable sign. He said everything else would be the same, except the square footage would be reduced by 10 square feet. He reviewed the criteria and said they would be met. He said the sign would be illuminated until 11:00 p.m. every night. Pat Moretti of Ricci Lumber said the lower section of the Great Rhythm sign was currently the changeable sign, but they proposed making the Weber Grill sign changeable, and the Doggie Daycare and Great Rhythm signs would be stable.

Mr. Hagaman asked if the new sign would be changed regularly. Mr. Moretti said it would change only once a day at the most and probably no more than a few times a week, and would change for occasional special events. He said the LED sign would be brighter than the other signs during the day. Attorney Pelech said all four signs would not be lit after 11 p.m. and the LED sign would come on around 7:00 a.m.

Chairman Rheume noted that the sign would advertise for two additional businesses, which was a significant change in that location, and he asked what the basis for the unique sign was, seeing that it was a distance away from the businesses it advertised for. Attorney Pelech said the purpose of the signage was to draw attention to the businesses and that only the panel would be changed. Chairman Rheume said the other two businesses were on a separate lot and that other businesses might want to do the same thing.

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

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

### **DECISION OF THE BOARD**

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

Mr. Lee said it seemed like a benign use because the sign was already there, and the added LED sign with an automated dimmer would not change much. He said granting the variances would not be contrary to the public interest and the spirit of the ordinance would be observed because the essential character of the neighborhood would not be altered. He said substantial justice would be done because the benefit to the applicant was not outweighed by anyone else. He said he didn't see any devaluation of properties because the sign had been there for a number of years. He said the hardship was that the sign couldn't be used in strict compliance with the ordinance. He said he wanted to stipulate that all the signs on the pole would be extinguished by 11 p.m.

Vice-Chair Johnson concurred, adding that the first four criteria were reinforced. He said the sign had existed for 27 years and was surrounded by commercial uses. He said the hardship was the proportions of the site and how it addressed the busy street, so he felt that a larger sign was justified. He also noted that the public way was limited because it was technically a driveway.

*The amended motion was to **grant** the variances, with the following stipulation:*

- *That all the signs on the pole be extinguished by 11:00 p.m.*

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

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### 2) Case 7-2

Petitioners: Kenneth K. and Deborah A. Jennings  
 Property: 27 Thaxter Road  
 Assessor Plan: Map 166, Lot 39  
 District: Single Residence B  
 Description: Appeal  
 Requests: Appeal a decision of the Portsmouth City Council to restore two involuntary merger lots.

*It was moved, seconded, and passed by unanimous vote to **postpone** the petition to the August 20, 2019 meeting per the appellants' request.*

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Mr. Mulligan resumed his voting seat. Vice-Chair Johnson recused himself from the petition.

### 3) Case 7-3

Petitioners: AER RE, LLC  
 Property: 185 Cottage Street  
 Assessor Plan: Map 174, Lot 14  
 District: General Residence A  
 Description: Double faced internally illuminated monument sign and (1) set of halo lit wall letters.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including :  
 a) from Section 10.1251 to allow 113 s.f. of signage where 40 s.f. of aggregate sign area is available;  
 b) from Section 10.1241 to allow a freestanding sign where freestanding signs are not allowed;  
 c) from Section 10.1253.10 to allow a 10' high free standing sign 15' from a lot line where a freestanding sign is not permitted;



- d) from Section 1251.20 to allow a 44.4 s.f. wall sign where 4 s.f. is the maximum sign area allowed for a wall sign and a 60 s.f. freestanding sign; and
- e) from Section 1261.10 to allow halo illumination where no illumination is permitted.

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

Clay Bublak of Neocraft Signs was present on behalf of the applicant. He reviewed the criteria and said they would be met.

Mr. Hagaman asked if 11 p.m. would be the turn-off time. Mr. Bublak said the signs could be shut down anytime by the client or by 11 p.m. per the ordinance. Mr. Parrott asked what determined the size of the sign, seeing that it was a new building and there was no precedence. Mr. Bublak said they considered the building's size, the area where the signage would go, traffic flow and speed, and visibility. He said they also had guidelines for certain speeds and viewing distances that suggested letter sizes. In response to further questions, Mr. Bublak said it was a fairly small sign and explained how halo lighting was indirect lighting shined backwards.

Mr. Hagaman asked why there was a need for a wall-mounted sign and a standalone sign, seeing that the building was so close to the corner of the road. Mr. Bublak said there were still questions about where the sign would be located but that they would try for the closest spot on Route One and would stay within the setbacks. He said there were two signs because the freestanding sign would be seen from a distance away and the wall-mounted sign would be seen up close. He said the bottom part of the sign could be used for additional tenants, but that the sign's square footage wouldn't have to increase because the current tenant's name would be removed and replaced. Mr. Parrott said the application originally stated that they expected additional businesses in the same building. Mr. Bublak said there would be only one business.

David Rosanier, co-owner of the building, stated that he would occupy the second floor and a single business would rent the first floor. He said the sign would help people find the building and that there was no intent to have an additional sign on the building for a tenant.

Chairman Rheume asked whether the small area at the bottom of the sign the address was sufficient to help people find the building. Mr. Bublak said it wasn't necessary to make the address large because the clients would see the building.

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

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

### **DECISION OF THE BOARD**

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

Mr. Parrott said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the signs were tastefully designed and appropriately sized. He noted that the business was on a corner, so it was appropriate to have more than one sign, which wouldn't alter the essential character of the neighborhood. He said there was no threat to the public's health, safety, or welfare, seeing that no one in the neighborhood had concerns and it was in a commercial area. He said granting the variances would do substantial justice because the benefit to the applicant was not outweighed by any harm to the public, and the signs would help clients find the business. He said the value of surrounding properties would not be diminished because the immediate surrounding properties were commercial, including a motel and a car dealership, so the signs would fit right in. He said the hardship was that the location was not where one expected to find a medical facility, and that the basic issue of placing that type of business in that location had been resolved when the variance was originally granted, and having a sign there was reasonable.

Mr. McDonell concurred and had nothing to add.

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

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Vice-Chair Johnson resumed his voting seat, and Mr. McDonell recused himself from the petition.

#### 4) Case 7-4

Petitioners: Kenneth W. Young  
 Property: 346 Colonial Drive  
 Assessor Plan: Map 260, Lot 136  
 District: Single Residence B  
 Description: To construct a 515 s.f. Attached Accessory Dwelling Unit above a proposed garage addition.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from Section 10.521 of the Zoning Ordinance including:  
 a) a lot area of 6,099 s.f. where 15,000 s.f. is required for each;  
 b) building coverage of 24% where 20% is the maximum allowed;  
 c) a 4'11" rear yard where 30' is required;  
 d) a 17' front yard where 30' is required; and  
 e) from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

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

The contractor Charles Hoyt was present on behalf of the applicant. He said the accessory dwelling unit (ADU) would allow the applicant's father to live with him and receive necessary care. He said the applicant reached out to all the abutters and tried to make the ADU as humble as possible. He reviewed the criteria and said they would be met.

Mr. Mulligan asked how much height elevation would be gained by the rear addition. Mr. Hoyt said it would be about six feet taller but would gain only 300 square feet of living space, and that the gross square footage would be 515 square feet, including the deck and stairs. In response to Mr. Hagaman's questions, Mr. Hoyt said there would be internal and external access to the addition and that he had spoken to the rear abutter about the project.

The applicant Kevin Young said some of the neighbors objected to the project but he felt that the design was the most efficient and least imposing.

John Donahue said he was a neighbor and felt that the design was a thoughtful one and that the impact would be minimal.

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

Tom Clearly of 316 Colonial Drive said the back of the garage would go up to 20 feet and would be out of character with the neighborhood and would affect the value of his home. He said he was also concerned about the back stairway with the small deck that could be used to look down on his property because the properties were so close together.

Attorney Kevin Baum said he represented Janice Kelly of 303 Colonial Drive, who was the neighbor to the rear of the garage. He said the size, mass, and proximity were concerning. He noted that the variance if granted would run with the land. He said the project was too big for the area and too close to the neighbors. He distributed photos of the area taken from Ms. Kelly's property, pointing out that the wall would be a massive block in front of her home and only five feet away. He reviewed the criteria and explained why they would not be met.

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

Mr. Hoyt said several neighbors approved the project and that it wasn't an overdevelopment of the property if there was no existing view corridor in the back of the garage.

Attorney Baum said his client had originally approved the project but then received the actual plans, so he felt that the neighbors who did approve the project had not seen the plans yet.

Mr. Mulligan asked what the setback of Ms. Kelly's house was and was told that it was five feet. He said it appeared that the space was for garden and yard tool storage.

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

## DISCUSSION OF THE BOARD

Mr. Lee said he would approve the project because the majority of the structure had been modified and the only way to go was up, and the deck wasn't much wider than the stairs and would face a street. Mr. Mulligan said the project didn't seem to require a lot of relief but the impact could be significant because the wall would grow to 20 feet, which would impact the rear abutter. However, he wasn't sure that it would be quite as severe because that part of the abutter's property was used for yard tool storage. Vice-Chair Johnson said it was an extreme case for a hardship to be made on the lot due to the siting of the house. He said he had no problem with the ADU, stairs, and deck, but agreed that the wall was too much and was just shy of being as tall as the ridge height of the current house and would be very visible to the street. Mr. Hagaman agreed, saying the 20-ft wall would impact air and light. Mr. Parrott said the property's shape and location were good and bad because the major part of the addition was closest to any property line and closest to the next house. He said the addition should go more toward the front. Chairman Rheame said the design's verticality and the nearness to a property line and another property's structure were concerns.

## DECISION OF THE COMMISSION

*Mr. Mulligan moved to **deny** the variances for the application as presented, and Mr. Hagaman seconded.*

Mr. Mulligan said the diminution of property value criteria was not met. He said the abutter to the rear would experience a significant diminution of value because the addition was so close and massive that it would cut off light and air. He said substantial justice would not be done because it was incumbent on the applicant to attempt a different configuration that didn't have such an impact on the neighborhood. He said a different design that shifted the garage and ADU forward would be workable and preferable. Mr. Hagaman concurred, adding that the petition failed on the first criteria as well because it altered the essential character of the neighborhood.

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

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*It was moved, seconded, and passed unanimously to **continue** the meeting past ten o'clock.*

Mr. McDonell resumed his voting seat.

### 5) Case 7-5

Petitioners:	Argeris & Eloise Karberas
Property:	11 Meeting House Hill Road
Assessor Plan:	Map 103, Lot 59
District:	General Residence B
Description:	Add a dormer on either side of an existing dormer.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief

- from the Zoning Ordinance including :
- a) from Section 10.521 to allow a 3' right side yard where 10' is required;
  - b) from Section 10.521 to allow a 14' rear yard where 25' is required; 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 contractor Rick Becksted Sr. of Becksted Associates was present on behalf of the applicant to speak to the petition. He said they wanted to raise the back wall of the house 2-1/2 feet and make the rooms usable, eliminate a garden shed and a bump-out, and add seven inches to a room to align with an existing dormer. He reviewed the criteria and said they would be met.

In response to Chairman Rheume's question, Mr. Becksted said he had no feedback from the Historic District Commission but would meet with them the following evening. He said the neighbors attended an open house and provided no negative feedback.

### **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 Mr. Parrott seconded.*

Mr. Mulligan 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, nor would the public's health, safety and welfare. He said substantial justice would be done because the loss to the applicant would outweigh any gain to the public if strict adherence to the ordinance were required. He said the property was non-conforming and the applicant would eliminate and/or reduce it. He said granting the variances would not diminish the value of surrounding properties because the project would be a vast improvement over the existing condition that would enhance surrounding properties. He said the hardship was that the property had special conditions, including that it had an odd-shaped lot, an amalgamation of two lots, and significant non-conformities that the applicant would mitigate, so there was no fair and substantial relationship between the purpose of the ordinance and its application to the property. He said the use was reasonable one, a residential one in a residential zone.

Mr. Parrott concurred and had nothing to add.

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

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Mr. Mulligan recused himself from the petition.

6) Case 7-6

Petitioners: Francis T. Delbene & Gwyn M. Burdell  
Property: 32 Union Street  
Assessor Plan: Map 145, Lot 29  
District: General Residence C  
Description: For a third dwelling unit over a reconstructed garage.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
a) from Section 10.521 to allow a lot area per dwelling unit of 1,843 s.f. where 3,500 is required.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernie Pelech was present on behalf of the applicant. He noted that a survey showed the property to be 132 square feet larger than that shown on the tax map. He said the lot area was 44 square feet less than the previous variance received, so the applicant had to apply for the lot area per unit variance again. He reviewed the criteria and said they would be met.

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

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

**DECISION OF THE BOARD**

Chairman Rheume said the tolerance calculation was a 2.3% change and that he and Mr. Stith would look into the Board's rules and regulations. Vice-Chair Johnson said it came down to people not getting their properties surveyed to save money and instead relying on the City map, which wasn't as accurate.

*Mr. Parrott moved to **grant** the variance for the application as presented, and Vice-Chair Johnson seconded.*

Mr. Parrott said the variance request was minor and just a mathematical issue, so there was no physical change. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, with no impact on neighborhoods. He said substantial justice would be done because the benefit to the applicant was obvious. He said granting the variance would pose no harm to the public and have no impact on the value of surrounding properties. He said there was no hardship that would argue against granting the variance because it was a minor mathematical change that involved no hardship at all.

Vice-Chair Johnson concurred and had nothing to add.

*The motion passed unanimously, 6-0.*

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7) Case 7-7

Petitioners: Matthew Wajda  
Property: 183 Coolidge Drive  
Assessor Plan: Map 268, Lot 29  
District: Single Residence B  
Description: Create a second lot from an existing lot.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
a) from Section 10.521 to allow a lot area and lot area per dwelling unit of 10,270 s.f. where 15,000 s.f. is required for each.

*The petition was rescheduled to the July 23, 2019 meeting.*

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Mr. Mulligan resumed his voting seat.

8) Case 7-8

Petitioners: Daniel Wyand and Lena Chamberland  
Property: 65 Pinehurst Road  
Assessor Plan: Map 221, Lot 72  
District: General Residence A  
Description: To construct a one-car detached garage.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
a) from Section 10.573.20 to allow an accessory building or structure to be set back 3' from the left side property line where 10' is required and 6' from the rear property line where 16' is required.

**SPEAKING IN FAVOR OF THE PETITION**

The owner Daniel Wyand was present to speak to the petition. He showed a diagram of the proposed garage. He said he previously replaced the old garage with an addition in the back and wanted to construct a new garage to the left of the driveway, noting that all the neighborhood's driveways and garages were to the left. He said the garage would be the furthest it could be from abutting structures, and that it would be screened by landscaping.

Mr. Hagaman said the garage looked similar to an ADU. Mr. Wyand said it was shaped that way to match the house's design and that the upstairs would be used for storage.

## **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 variance for the petition as presented, and Mr. Lee seconded.*

Mr. Mulligan said the applicant could fit that size of garage within the allowable building envelope if it were shifted to the other side of the dwelling, but the driveway was already there and the location was in keeping with the rest of the neighborhood's custom of placing their garages on the left side of their properties, so the project was in character. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said substantial justice would be done because the loss to the applicant was not outweighed by any gain to the public. He said the abutter to the rear was not impacted much because the lot was so large and the building envelope was up close to the front, and the abutter to the side was screened by landscaping, so granting the variance would not diminish the value of surrounding properties. He said the hardship was that the property had special conditions of having an irregular-shaped lot and a fairly sizable dwelling already built that distinguished it from others in the area, so there was no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. He said it was a reasonable residential use in a residential zone and met all the criteria.

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

*The motion **passed** unanimously, 7-0.*

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## **IV. OTHER BUSINESS**

No other business was presented.

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## **V. ADJOURNMENT**

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

Respectfully submitted,

Joann Breault  
BOA Recording Secretary