

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

7:00 P.M.

August 20, 2019

MEMBERS PRESENT: Chairman David Rheaume, John Formella, Jim Lee, Peter McDonell, Chris Mulligan; Alternate Chase Hagaman

MEMBERS EXCUSED: Vice-Chairman Jeremiah Johnson, Arthur Parrott, Alternate Phyllis Eldridge

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume noted that there were three Board recusals and that Alternate Chase Hagaman would assume a voting seat. He stated that Petition 7-2 for 27 Thaxter Road was postponed to the reconvened August 27, 2019 meeting.

I. APPROVAL OF MINUTES

A) July 16, 2019

*It was moved, seconded, and passed by unanimous vote to **approve** the July 16, 2019 minutes as amended.*

B) July 23, 2019

*It was moved, seconded, and passed by unanimous vote to **approve** the July 23, 2019 minutes as presented.*

II. PUBLIC HEARINGS – OLD BUSINESS

A) Case 7-2. Petition of Kenneth K. and Deborah A. Jennings for property located at 27 Thaxter Road to Appeal a Decision of the Portsmouth City Council to restore two involuntary merger lots. Said property is shown on Assessor Plan 66, Lot 39 and lies within the Single Residence B District.

*This petition was **postponed** from July 16, 2019 and requested to be heard at the reconvened meeting on Tuesday, August 27, 2019.*

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case 8-1. Petition of Richard Fusegni for property located at **201 Kearsarge Way** wherein relief was required from the Zoning Ordinance to subdivide one lot into three lots, one of which will be nonconforming including the following variance from Section 10.521: a) to allow 83’ of continuous street frontage where 100’ is required. Said property is shown on Assessor Plan 218, Lot 5 and lies within the Single Residence B District.

Mr. Mulligan recused himself from the petition. Chairman Rheume said the applicant requested that his petition be postponed to the September 2019 meeting due to the fact that there were only five Board members present that evening.

*Mr. McDonell moved to **postpone** the meeting, and Mr. Hagaman seconded.*

Mr. McDonell said the Board usually gave an applicant the option to postpone if the entire Board wasn’t present. Mr. Hagaman concurred, noting that it was following a Request for Rehearing.

*The motion **passed** by unanimous vote, 5-0.*

Mr. Mulligan remained recused. Chairman Rheume requested that Petition 8-4, 41 Salem Street, be taken out of order to postpone it. He said the applicant asked that it be postponed because only five Board members were present. He read the petition into the record.

*Mr. Lee moved to **postpone** the application, and Mr. McDonell seconded.*

Mr. Lee said it was the first time that the applicant requested to postpone and that the Board usually granted that type of request. Mr. McDonell concurred and had nothing to add.

*The motion **passed** by unanimous vote, 5-0.*

Mr. Mulligan resumed his voting seat.

Chairman Rheume said the applicant’s representative for Petition 8-7, 187 McDonough Street, requested that the petition be taken out of order so that it could be heard first.

*Mr. Hagaman moved to take Petition 8-7 out of order, and Mr. Mulligan seconded. The motion **passed** by unanimous vote, 6-0.*

The Board then addressed Petition 8-7. (See page 12.)

Minutes Approved 9-17-19

2) Case 8-2. Petition of Michael Brandzel & Helen Long for property located at **39 Dearborn Street** for a wall-mounted outdoor a/c condenser wherein the following variance is required:
a) from Section 10.515.14 to allow a 2'6" right side yard where 10' is required. Said property is shown on Assessor Plan 140, Lot 3 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

The applicants Michael Brandzel and Helen Long were present to address the petition. Mr. Brandzel noted that the Board granted variances for the shed and addition in 2015. He said the condenser lines would have to be run through the gable ends because the home was positioned strangely on the lot. He said the abutters were some distance away and the direct abutter was a commercial property. He reviewed the criteria and said they would be met.

Mr. Mulligan verified that the approved shed was the one shown in the photo and that it would shield the condenser. In response to Mr. Hagan's questions, Mr. Brandzel said they didn't plan to mount the condenser around the corner of the building because the Board previously granted a variance to push the wall out four feet in exchange for removing the bumpout. He said the Historic District Commission (HDC) also approved the condenser at that location the previous month. He said the condenser wasn't in the view easement.

Chairman Rheume opened the public hearing.

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 application as presented and advertised, and Mr. Lee seconded.*

Mr. Mulligan said the location for the condenser was the most appropriate one and that the request to upgrade an older historic property was reasonable, especially with prior HDC approval at that location, and the residential neighbors and commercial abutter would not be impacted. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance; the essential character of the neighborhood would not be altered and the public's health, safety, and welfare would not be injured. He said it would do substantial justice because the loss to the applicant if the Board required that the condenser be set elsewhere would not be a gain to the public. He said the value of surrounding properties would not be diminished because the upgrade was an appropriate and modest one. He said literal enforcement of the ordinance would result in an unnecessary hardship, noting that the lot was an unusual size and shape and was situated by itself on a private drive, which were special conditions of the property that

distinguished it from others in the area. He noted that the structure was already an old, nonconforming one that had historic significance, and that the place for the condenser was the most appropriate to maintain the structure's historic accuracy, so there would be no fair and substantial relationship between the purpose of the setback and its application to the property. He said the use was a reasonable one, noting that the Board approved a lot of condensers and that they were seen a lot in residential neighborhoods. He said the request met all the criteria.

Mr. Lee concurred with Mr. Mulligan and congratulated the applicant for the lengths he went to in preserving the historic character of the house.

Mr. McDonell noted that the Planning Department suggested a plus or minus range on the setback. Mr. Mulligan said he could agree to a 6-inch range for margin of error. Chairman Rheaume explained how it could encroach more into the required setback. Mr. Mulligan then said he didn't want to add a condition to his motion. Chairman Rheaume noted that it wouldn't require a survey and thought it would be fine.

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

3) Case 8-3. Petition of Russell Serbagi for property located at **306 Marcy Street, Unit 3** to install a mini split ductless a/c system including condenser and air handler system with lines in conduit wherein the following variance is required: a) from Section 10.515.14 to allow a 7' right side yard where 10' is required. Said property is shown on Assessor Plan 102, Lot 75-3 and lies within the General Residence B District.

SPEAKING IN FAVOR OF THE PETITION

The applicant Russ Serbagi reviewed the petition, pointing out that three existing window-mounted air conditioners would be replaced with the mini-split system and the augmented heating system. He said he received approval from the condominium association. He noted that all the utilities were at the same side of the building that the mini-split system would be located.

Mr. Hagaman asked the applicant if he had access to the rooftop terrace. Mr. Serbagi agreed and said the terrace consisted of two back decks, but locating the units there might impact the neighbor. In response to Chairman Rheaume's questions, Mr. Serbagi said he would go before the HDC in September. He said the owner of Unit 2 was considering a similar system but didn't know where it would be located, and that there was a good area in the back and to the side for the lower unit owner to have a condenser.

Chairman Rheaume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

Minutes Approved 9-17-19

DECISION OF THE BOARD

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

Mr. McDonell verified that the application did not require a survey. He said that granting the variance would not be contrary to the public interest or to the spirit of the ordinance. He said it would pose no conflict with the purposes of the ordinance because it would not alter the essential character of the neighborhood or threaten the public's health, safety, and welfare. He said the new system would replace three window units, which was allowed. He said the three window units were a less desirable feature on the side of that house. He said granting the variance would do substantial justice because the benefit to the applicant was obvious and would pose no harm to the public, especially with the system placed on the side of the house that had all the utilities. He said the removal of the three window units would help in not diminishing the values of surrounding properties. He said literal enforcement of the ordinance would result in an unnecessary hardship, noting that there wasn't any other good place to sit the condenser system and some relief was necessary, which were special conditions that distinguished it from others in the area. He said there was no fair and substantial relationship between the purposes of the ordinance and its application to the property and that the proposed use was a reasonable one, noting that the Board got a lot of similar requests for other properties.

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

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

4) Case 8-4. Petition of Seacoast Veterans Properties, LLC for property located at **41 Salem Street** to demolish existing structure and construct four townhouse residential units in two buildings wherein the following variance is required: a) from Section 10.521 to allow a lot area per dwelling unit of 2,726 s.f. where 3,500 s.f. is required. Said property is shown on Assessor Plan 144, Lot 31 and lies within the General Residence C District.

***ACTION:** The motion was **postponed** by unanimous vote, 5-0.*

5) Case 8-5. Petition of Scott D. Young for property located at **7 Suzanne Drive** for a 12' x 46' rear addition wherein variances from Section 10.521 are required to allow the following: a) a 21' rear yard where 30' is required; and b) 21% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 292, Lot 80 and lies within the Single Residence B District.

SPEAKING IN FAVOR OF THE PETITION

The applicants Scott and Jessica Young were present to speak to the petition. Mr. Young reviewed the petition and the criteria, noting that the addition would be on the back of the home. In response to the Board's question, he said the increase in square footage would be 500 feet.

Chairman Rheume opened the public hearing.

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 as presented and advertised. He said he would adopt the City Staff's recommendation that a plus/minus range of six inches be given for the relief requested for the rear yard setback, and a one percent variance for the building coverage.*

Mr. Hagaman seconded.

Mr. Mulligan said it was a very small lot in the SRB zone and drove the necessary relief, and that the lot had less than 10,000 square feet in an area that should have 15,000-s.f. lots. He said the lot didn't have enough depth to conform to the front yard setback and that any reasonable addition would require some relief. He said the relief requested was modest and that the applicant wanted to go one percent over the maximum building coverage, which wasn't much for such a small lot. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance; the essential character of the neighborhood would not be altered and the public's health, welfare, and safety would not be impacted. He said it would do substantial justice because the loss to the applicant if the Board required that the applicant respect all the setbacks and lot coverage wouldn't give the applicant a lot of options except to go straight up, so the loss to the applicant would outweigh any gain to the public. He said granting the variances would not diminish surrounding property values because what was proposed was barely noticeable from the street and abutters and wasn't a huge amount of relief. He said literal enforcement of the ordinance would result in unnecessary hardship because of the special conditions that included the nonconformance to lot size and setbacks, so there was no fair and substantial relationship between the purpose of those requirements and their application to the property. He said it was a reasonable use and should be approved.

Mr. Hagaman concurred with Mr. Mulligan and commended the applicant for creating a tasteful addition that was very considerate of the neighborhood and the abutters.

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

6) Case 8-6. Petition of Galaro Properties LLC, owner, Earth Eagle Brewings, applicant, for property located at **175 High Street** for seasonal outdoor entertainment wherein the following

Minutes Approved 9-17-19

variances or special exceptions are required: a) a special exception from 10.440, Use # 3.521 to allow an outdoor performance facility with an occupancy up to 500 people; and b) a variance from Section 10.592 to allow an outdoor performance facility use to be within 500' from a residential district. Said property is shown on Assessor Plan 118, Lot 16 and lies within Character District 4.

SPEAKING IN FAVOR OF THE PETITION

The applicant and owner of Earth Eagle Brewings Alex McDonald was present to speak to the petition. He reviewed the petition, noting that the patio area had a capacity of 40 people and that the concerts wouldn't be large. He said they would close at 9 p.m. Sundays through Thursdays and 10 p.m. on Fridays and Saturdays and that there wouldn't be entertainment every day.

In response to the Board's questions, Mr. McDonald said there would be no staging because it was a corner area with both sides fenced in and would have a portable P.A. system. He said the outdoor seating area had been there for four years and had six picnic tables and some umbrella spots and that the patio's square footage was 1200 square feet. He said he just wanted to add some ambiance to the patio, noting that there would be no dance floor and that it would not result in standing room only on music nights.

Chairman Rheume opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

Lauren Greenwall said she wasn't really in opposition but that her primary concern was when the music would begin because her office building was across the street.

Judy Miller of 77 Hanover Street stated that she had copies of letters in opposition from the Harbor Hill Condominium Association president Martha Dwyer and another resident, as well as signatures from other condominium residents. She also had a copy of the applicant's website indicating that there was indoor live music in June and July. She read Ms. Dwyer's letter that addressed concerns relating to limits for noise volume, band size, type of live entertainment; lack of evidence proving no detriment to surrounding property values or public interest; and the issue of how 500 people could be accommodated in such a small patio area. She said the resident's letter concerned noise pollution in a residential zone and that the other signatures were from owners of 21 condominium units who also opposed the petition.

Michael Lacroix of 145 High Street said he owned other buildings in the area and represented 20 families. He said the original 'sample bar' business turned into a full bar and that the garage door for brewing supplies turned into a screen door for an open-air bar, pointing out that every time the applicant asked for something, it turned into something else. He said he was concerned that 100 people in a parking lot surrounded by high-rise buildings would turn into a safety issue.

Paige Trace of 27 Hancock Street said she represented the NH National Society of Colonial Dames, who owned the Moffatt-Ladd House at 154 Market Street and also 182 Market Street, which was filled with apartments and separated only by a hedge of trees from the brewery's driveway. She said the project would impact the public interest and affect the quality of life and property values at both properties. She said the Moffett-Ladd House held weddings in the gardens and hired bands, which could become a 'war of the bands.' She said the harm to the public would be a noise issue rather than visual and would not observe the spirit of the ordinance and would affect the values of the Moffett-Ladd House and surrounding properties.

Mr. Mulligan noted that the pub had been there for seven years and asked what effect it had had on the Moffett-Ladd House. Ms. Trace said the next speaker, Dr. Ward, would address the question as well as other questions from the Board pertaining to issues with the Gas Light restaurant's live music and whether the Moffatt-Ladd House had amplified music.

Barbara Ward of 16 Nixon Park said she was the director and curator of the Moffatt-Ladd House, which held wedding ceremonies, corporate dinners and non-profit annual fundraisers, and that everyone expected a peaceful environment. She said she was surprised by Earth Eagle's growth because it went from being a small brewing supply purchase place to a bar that was very loud for a place in the middle of downtown. She said outdoor concerts could attract lots of people who would pile up in the alley and walk around in the streets inebriated. She said there could be issues with glare, heat, cigarette smoke, and fire because it was in such a small area, and it could warrant an increase in municipal services and possibly police and presence. She said it would have a significant impact on the Moffett-Ladd House and Gardens.

Mr. Mulligan again asked if there had been a negative effect in the existing operation at the Moffatt-Ladd House in the last seven years. Ms. Ward said the impact had been very gradual but had increased and included noise, loud music and voices, and people spilling over. Mr. Hagan asked whether any specific complaints had been brought forward by area residents or by people renting the Moffatt-Ladd House about the existing setup of Earth Eagle Brewings and Gas Light. Evie Lacroix of 145 High Street rose to respond and said her bedroom faced the bar and it was difficult to sleep on the weekends because the loud noise and music were constant.

Ms. Ward said the Moffatt-House personnel and visitors had noticed loud screaming coming from the area, so it was already a problem with only 40 people. She suggested that the Board do a site visit to see how Eagle Earth Brewings was sandwiched in-between residential backyards

SPEAKING TO, FOR, OR AGAINST THE PETITION

Sheridan Cudworth said she was the general manager of Eagle Earth Brewings and also a bartender and that she and the owners took people's concerns seriously. She said the music was kept at a minimal level, that people had to leave the patio at 10:00, and that they had never received noise complaints from neighbors. She said she enforced the patio's 40-people capacity.

In response to the Board's questions, Ms. Cudworth said she had not received noise complaints from neighbors in the two years she had worked there, and that music had to be amplified in such a small outside area because the musicians wanted a small amount of amplification.

Judy Miller said there were about 50 residents in 21 condo units that understood that the condominiums were built after the Gas Light opened, but Earth Eagle Brewings patio music would be added to the neighborhood and the residents were not in approval.

Alex McDonald said he understood the sensitive nature of the issue and had always been community oriented. He said the brewing company expanded in accordance with the City and that he'd like to stay in Portsmouth because moving to another location was not financially viable. He said he had heard music from the Moffatt-Ladd House as well but that it wasn't a problem for him, noting that he had also sponsored events there. He hoped that the Board would judge in his favor and see that he wasn't trying to be a detriment to the community.

Gretchen McDonald, co-owner of Earth Eagle Brewings, said she was struck by the issue of the 500-person capacity, which was determined by the ordinance. She said she and her husband were just trying to add value to their establishment and drive more business. She said it would not be a big concert venue but would be more of an intimate music venue for locals and tourists alike.

Barbara Ward said she appreciated that Earth Eagle Brewings wanted to provide value but said they also wanted to increase their business, so she was concerned that the granted variance and special exception would allow a large number of people and outdoor concerts every night. She said the Moffatt-Ladd House events ended by 9:30 p.m. and the place closed at 10:00.

Alex McDonald said his establishment closed at 10 p.m. weekdays and at midnight on Fridays and Saturdays. He said the music would start at 6 p.m. and end by 9 p.m.

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

DISCUSSION OF THE BOARD

Mr. Mulligan said that there was a very limited low capacity due to its size. He said he wasn't convinced that what was proposed would have a deleterious effect on the Moffatt-Ladd House but also wasn't convinced that the hardship case had been made, given that the brewery was in proximity to a number of residential buildings and the ordinance required a performance facility to be outside of 500 feet from a residential area. He said he saw lightly-amplified acoustic music as an accessory to the dining experience, like piped-in music, only live, and not a scenario for massive gatherings. He said the ordinance defined a performance facility as a building or area designed, intended, or used primarily for music, dance, dramatics, or other performances. He said he didn't think it would primarily be a music venue but just some music at the lounge. However, he said the ordinance required it to be outside of 500 feet, so he didn't see the hardship.

Mr. Hagaman said he struggled with the hardship and the public safety side because he found it hard to believe that booking artists would not draw a larger crowd in a small area. He said he would want to see a plan, and if the Board granted the variances, he would suggest lots of stipulations on performance times and days as well as crowd size and also require that it be primarily an eating area instead of a performance area. He said it was like trying to put a square peg in a round hole. Mr. Stith said the requested use was similar to the 3S Artspace. Mr. Hagaman said the performance was adjacent to the eating area, but Mr. Stith said 3S Artspace had an outdoor area as well. Mr. Hagaman said their outside eating area was off to the side, so it wasn't the same. Mr. Mulligan said the 3S Artspace was mostly a performance area and wasn't as close to residential as Earth Eagle Brewings was.

Mr. Formella said he struggled with it as well because of the way the proposal was phrased. He said the variance referred to an outdoor performance facility with a 500-person occupancy, but the place wasn't really a performance facility but was a patio with music. He said the music wouldn't be that loud and people wouldn't gather just for the music, so he could see an argument for a hardship because of the unique characteristics of the property. He suggested limiting the days and shaving off the weekday hours a bit. He said it was more like a restaurant with an outside deck with live music at certain hours than a performance venue where an act was booked. Mr. Hagaman said it could transition to something larger. Mr. Formella said it could be capped at 40 people, which was the patio's maximum capacity.

Mr. McDonell said he agreed with Mr. Mulligan that finding a hardship was a struggle. He said it would probably be a fairly moderate use, so regarding the diminution of property values, he wasn't overly concerned about other commercial uses in the area as he was about neighbors who were very close to it, especially the neighbor whose bedroom window looked out on the patio. He said there would be some increase in outside use that would cause additional noise, like people moving around and a combination of increased volume from the performance and an increased number of people talking over the music, so he understood the neighbor's point about her property value being diminished. He said he would feel the same way. He said he understood the applicant's position that it would be a very minimal increase in use, and he had no concerns of capping the number of people in attendance, but he didn't know how the Board would get past an increase that would be enough not to be a detriment to some neighbors.

Chairman Rheume said it was a lot more cut and dried than what other people saw. He said the applicant was talking about booking 2-3 piece bands on a small patio, but the focus was the music, which to him was saying that the performance would be the focus. He noted that the applicant also noted that people would order food and enjoy the band. He said that if the applicant just wanted ambiance, he could place a speaker on the patio and play music, which wasn't a performance facility. He said the proposal met the basic intent of the ordinance but failed the special exception and variance. He said he didn't think it would be a massive problem but significant enough that it would violate the spirit of the ordinance. He said the ordinance was trying to keep that kind of outdoor performance away from residential areas. He said the main argument for 3S Artspace was that it was far removed from residences, and Earth Eagle Brewings was right in the middle of a number of residential units. He pointed out that lots of

other places in the downtown area or the west end with similar setups could try to do similar things. He said the intent of the ordinance was to prevent that sort of performance from taking place. He said 500 feet was an exceptionally large value but was in the ordinance, and he didn't see that the brewery's location was unique and a better location for a performance than it would be at some other properties, so he didn't see a hardship. He said that, even for the special exception, the noise factor was one of the characteristics that the Board looked at, and there were reasonable arguments made from the neighbors regarding their proximity to the property in terms of residential areas where people wanted peace and enjoyment. He thought the proposal went above and beyond and said he would not be in favor of approving it.

Mr. Lee agreed with Chairman Rheume, noting that it was a proverbial attempt to fit a square peg into a round hole. He said the business started out as one thing, grew in popularity, and changed into something else entirely and he thought it was a further attempt to continue that change. He said there was a huge number of residences around Earth Eagle and that it wasn't a good idea to have music in that area.

DECISION OF THE BOARD

*Mr. Lee moved to **deny** the application, and Mr. McDonell seconded.*

Mr. Lee reiterated that it was an attempt to put a square peg in a round hole and that the noise and everything else generated would violate the spirit of the ordinance.

Mr. McDonell said, on the variance side, he agreed that the spirit of the ordinance would not be observed. He said the purpose of the ordinance in that context was to keep that sort of use away from residential areas, and that the proposal clearly failed on both the explicit and implicit nuances of that variance. He said it also failed on the value of surrounding properties not being diminished, noting that the Board heard good testimony that certain properties would have a diminution in their property's value due to increased noise. He said the Board had not heard any hardship articulated. On the special exception side, Mr. McDonell said there would clearly be some increase in noise and use that would be a detriment to property values, so the proposal failed on that point as well, and that one failure was enough.

Chairman Rheume verified that both makers of the motion felt that the proposal did not meet both the variance and special exception criteria.

Mr. Hagaman said he struggled with the request because there were a few criteria that he saw the variance request faltering on, namely the hardship issue, spirit of the ordinance, and a bit on public safety, but he felt that it was unfair that other businesses could have amplified music. He said it wasn't the Board's place and that there were limitations on those surrounding businesses. He said the applicant's business was the right type of business for that kind of endeavor but was in the wrong place, especially when considering the requirements of the ordinance.

*The motion to deny **passed** by a vote of 5-1, with Mr. Formella voting in opposition.*

7) Case 8-7. Petition of Haven Properties LLC for property located at **187 McDonough Street** for demolition of existing single family residence and construction of a new single family residence wherein variances from Section 10.521 are required to allow the following:

a) a lot area of 2,537 s.f. where 3,500 s.f. is the minimum required; b) a lot area per dwelling unit of 2,537 s.f. where 3,500 s.f. is the minimum required; c) continuous street frontage of 48' where 70' is the minimum required; d) building coverage of 43% where 35% is the maximum allowed; e) a 4' left side yard where 10' is the minimum required; and f) a 9' rear yard where 20' is the minimum required. Said property is shown on Assessor Plan 144, Lot 43 and lies within the General Residence C District.

Chairman Rheaume stated that the application was previously denied by the Board two months prior and asked the Board if there were concerns with Fisher v. Dover. Mr. Hagaman said he had no concerns because the submitted plans were significantly different from the prior application, and there was no opposition from anyone else.

SPEAKING IN FAVOR OF THE PETITION

Attorney Derek Durbin was present on behalf of the applicant and stated that his client had presented in June for the redevelopment of the property. He reviewed the petition, noting that the applicant proposed to construct a new home that would be code compliant and more conforming to zoning. He said that portions of the existing home encroached into the abutting left and rear properties and that the owner had entered into a purchase and sales agreement to buy a small portion of the railroad land, which would make the project economically viable. He noted that the Planning Board approve it. He said the proposed home was significantly modified in response to the Board's previous concerns and that the changes include eliminating the deck and bumpout features, which resulted in a compliant right setback and a reduced building coverage. He reviewed the criteria and said they would be met. He noted that the applicant would support a plus or minus 6-inch deviation if needed, even though an 8-inch deviation proposed.

In response to Mr. Mulligan's questions, Attorney Durbin said the lot line adjustment had gone through and that the sale was contingent on the Board's approval.

Mr. Mulligan said he had to therefore recuse himself from the petition. Attorney Durbin said he would still move forward.

In response to Mr. Hagaman's questions, Attorney Durbin verified that the original square footage of the house was 870 and the new square footage was 1,000, for a difference of 177 square feet. He said the living space was be around 1,000 square feet larger. He said the primary entrance to the new house would be to the right near the driveway, with another ingress/egress in the rear. He said the basement would not be finished. He said the third floor would have a bedroom, closet, bath, and storage space and was driven by the floor plan itself in trying to make

the best use of the site. He said the building coverage if the new footage wasn't added to the lot by redrawing the lines would be significantly higher by being slightly over 50 percent.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak. Chairman Rheume noted that the Board received three emails from abutters, one in support and two in opposition. He closed the public hearing.

DISCUSSION OF THE BOARD

Chairman Rheume asked whether the Board agreed that the proposal was substantially changed enough to meet the criteria. Mr. Hagaman said it was a dramatically-improved application because it got rid of the garage addition and pointed everything toward the railroad. Mr. Lee said he was lukewarm toward it because it seemed like a large structure for the neighborhood, especially with the third floor. Mr. McDonell said it did seem like a fairly imposing structure, especially compared to others in the area, but he said the Board was being asked to grant a decrease in a lot of the non-conformities, resulting in a lower building coverage and increased or unchanged setbacks, and a lot of it was driven by the fact that the applicant bought almost 700 square feet of additional land in the back. He said it was more in compliance than it was, but he was torn because he didn't have a clear sense that it was a sure thing one way or another.

Mr. Stith noted that the Planning Board approved the lot revision the previous week and that the sale may be contingent on getting all the approvals.

Chairman Rheume said he believed that the applicant listened to the Board by making the changes. He said he had been adamant that the garage structure was at the root of a lot of issues because it caused a second setback issue that had not previously existed, and there was also open space between the existing home and abutting property that had the large deck structure on top of the garage, peering right over the adjacent property, which was very imposing on the neighbor's privacy and light and air enjoyment. He said the applicant removed the garage, which was a plus. He said there was no way for the applicant to be in full compliance by building any kind of structure on the spot -- it was currently a single-family home with a lot area below what was required that would be replaced by another family home of some dimension on that lot that was smaller than required. He said the street frontage had existed for a long time, with a home that worked successful even though it wasn't in compliance, so it was the same status quo. He said all the setback requirements were improved substantially; the left yard setback was four feet from the property line and the rear yard setback was originally zero feet and was increased substantially. He said the building coverage was improved and the additional square footage in the back helped bring it more in compliance with the lot area per dwelling unit, going from 1,868 square feet to 2,537 square feet. He noted that some abutters had a big issue with the third floor, but he believed that the added height was sort of hidden and faced the railroad property, so it was an open area and wouldn't impose directly onto an abutter. He understood the applicant's

reasoning for the third floor as far as views and a future potential of construction behind it. He said that, as far as the 8'10" vs. 9' discrepancy, his thought was not to offer too much in terms of leeway because it could be in full compliance with the nine feet or the Board could give it a few inches. He said he didn't see a need for a lot of additional relief because it was a new house.

DECISION OF THE BOARD

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

Mr. Hagaman said there was an improvement in the lot area square footage, noting that the street frontage couldn't really change because it was stuck between two properties. He said there were improvements in the left and rear yard setbacks as well as building coverage. He said the applicant was increasing the lot size by redrawing the lines but was positioning the new home in better compliance. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposal didn't violate the zoning objectives and wouldn't alter the essential character of the neighborhood. He said a single residence home in a residential area would pose no threat to the public's health, safety, or welfare, and there would be no parking issues or increase in traffic. He said it would do substantial justice because there would be no gain to the public that would be outweighed by any loss to the applicant for being able to rebuild a dilapidated home that was outside the zoning compliance. He said the value of surrounding properties would not be diminished and that there probably would be an increase in property values due to the new home being in better compliance. He said literal enforcement of the ordinance would result in unnecessary hardship because of the special conditions that included the lot's narrowness and odd shape and the fact that it abutted the railroad tracks. He said any changes to the property would require a variance, so there was no substantial relationship between the general purpose of the ordinance and its application to the property. He said the residential use was a reasonable one in that district.

Mr. McDonell concurred with Mr. Hagaman. He asked whether the rear yard setback of 9 feet could be kept. Chairman Rheume agreed.

Chairman Rheume said the four-bedroom house had the potential for more vehicles and that the City looked at it as additional bedrooms for children or people who didn't drive. He said the applicant was complying with the two off-street parking spot requirement.

*The motion **passed** by unanimous vote, 5-0.*

IV. OTHER BUSINESS

A) Parking Principles

Mr. Stith said the City Council had a work session about parking principles and distributed the results to the land boards and that some feedback was received from the Board but that a consensus was needed to send back to the City Council. After further discussion, Chairman Rheaume said more definition and explanation were required from the City Council for the Board to have a more informed debate and that he didn't think the Board's comments were ready to go back. It was decided that the Board's comments would be addressed at the September meeting.

V. ADJOURNMENT

*It was moved, seconded, and passed unanimously to **adjourn** the meeting at 9:45 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary