

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

7:00 P.M.

SEPTEMBER 17, 2019

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, John Formella, Jim Lee, Peter McDonell, Chris Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: Peter Stith, Planning Department

ALSO PRESENT: Juliet Walker, Planning Director

Planning Department Representative Peter Stith was absent from the meeting, and Planning Director Juliet Walker was present in his place.

I. APPROVAL OF MINUTES

A) August 20, 2019

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

B) August 27, 2019

*It was moved, seconded and passed by unanimous vote to **approve** the August 27, 2019 minutes as amended.*

II. REQUEST FOR EXTENSION

Mr. Mulligan recused himself from the petition, and Alternate Ms. Eldridge took a voting seat.

A) Request for Extension regarding property located at **621 Islington Street**.

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **grant** the request for extension, and Mr. Parrott seconded.*

Vice-Chair Johnson said it was standard to grant a one-year extension, especially when the applicant needed the extra time to get all the approvals and go through the permit process. Mr. Parrott and Chairman Rheume concurred with Vice-Chair Johnson.

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

Mr. Mulligan resumed his voting seat, and Ms. Eldridge returned to alternate status.

Chairman Rheume asked that Case 8-12 for Foundry Place be taken out of order so that it could be addressed immediately.

*Vice-Chair Johnson moved to take Case 8-12 Foundry Place out of order, and Mr. McDonell seconded. The motion **passed** by unanimous vote, 7-0.*

Chairman Rheume then noted that the petition was previously tabled, and he asked that it be taken off the table for consideration.

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

Please see Case 8-12 on page 10.

III. OLD BUSINESS – PUBLIC HEARINGS

Chairman Rheume, Mr. Mulligan, and Mr. Parrott recused themselves from the petition. Vice-Chair Johnson assumed Acting Chair and Alternates Ms. Eldridge and Mr. Hagaman took voting seats.

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 the July 16, 2019 and August 20 and 27, 2019 meetings.)*

SPEAKING IN FAVOR OF THE PETITION

The applicant Deborah Jennings asked if there would be a conflict of interest since Mr. Mulligan was from the same law firm as Attorney Pelech. Attorney Pelech rose to speak and said the fact

that he was a member of the same firm had no bearing as long as Mr. Mulligan recused himself. He then distributed to the Board a copy of the New Hampshire Rules of Professional Conduct. Attorney Ralph Woodman was present of behalf of the applicants. He reviewed the petition in detail as well as the statute relating to voluntary and involuntary mergers. He explained why the property was treated as one lot and why the property owner was estopped from seeking relief.

Mr. McDonell asked whether Attorney Woodman had cited case law supporting that the fence surrounding the property made it a single lot. Attorney Woodman said the case law referred to any action an owner might take that would indicate he was treating a property as one, or more than one, lot. He said he didn't know if there were actual fence cases, but he felt that if a person put a fence around a property, that person thought it was one piece of property. He said he saw nothing analogous in the cases and felt that it was the principle.

Mr. Hagaman asked if building permits were filed. Attorney Woodman said both variances were granted, but the percentage of coverage on the second variance was shown as including the entire lot. Mr. Hagaman asked what the specific example was from the Supreme Court about applying for a building permit. Attorney Woodman said it was a representation to a municipality that it was for the purpose of the variance, and that it was for the entirety of the lot and not just a portion of it. He explained further and concluded that the representation made on the building permit was analogous to the representation made in pursuit of a variance for that particular property. Mr. Formella asked why a lot of the information in the application was not presented to the City Council. Attorney Woodman said the applicant had to do what was necessary to find out the property's history when the appeal was filed. Mr. Formella noted that generally an appellate body didn't tend to consider significant new facts on appeal. Attorney Woodman said those types of appeals were hearings *de novo* in the past.

Acting-Chair Johnson asked Planning Director Ms. Walker if it was a *de novo* hearing. Ms. Walker said the Board had the option to rehear the case but they could refer it back to the City Council for consideration. She recommended referring it back to the City Council if the Board had concerns about the process. She said she wasn't sure if it legally was a *de novo* situation.

Acting-Chair Johnson opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Bernie Pelech said he represented Chad Callihan, the owner of 27 Thaxter Road. He said the burden was on the municipality, the Planning Department. He noted that the case had also been referred to the Planning Board and the City Council and that all three could find no evidence that prior owners or Mr. Callihan had merged the property. He said the City Council voted to unmerge the lots, and in 1981, the City merged the lots. He said Attorney Woodman submitted a plan showing the ownership of Lot 39 on Thaxter Road and Lot 52 fronting Islington Street, neither of which were the adequate size as required by the ordinance, so the owner was required to get a variance to separate the lots, but the lots were already separated. He said the 2011 argument indicating that Mr. Tong must have merged the big lot had already been done in

1981 by the City and that Mr. Tong simply followed City procedure. He said the Planning Department researched it and submitted a memo to the Planning Board, who found that the lot should be unmerged. He said the argument that the owners merged the lots by submitting applications for variances was not to be believed, and a fence was not evidence of merger by conduct. Attorney Pelech submitted several letters supporting the unmerging of the lot.

Mr. Hagaman asked Attorney Pelech's opinion about the New Hampshire State Supreme Court case that said applying for a building permit and presenting the property as merged was analogous to treating the property as merged. Attorney Pelech said he didn't agree, noting that the 2004 and 2011 applicants applied for variances because the City had considered Lots 39 and 52 merged and mandated it.

Diane Share of 38 Thaxter Road said she understood Mr. Callihan's desire to restore two involuntary-merged lots, but she didn't know what the future proposal would be. She said she would support either a normal home on the lot or that it would remain green space.

Dave Higgins of 344 Aldrich Road said he lived behind Mr. Callihan and had the same size lot and possibly an involuntary merged lot, and that he felt he deserved the right to have the lot unmerged voluntarily, so he supported Mr. Callihan.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Hagaman asked Planning Director Juliet Walker to clarify what the Board's options were. Ms. Walker said if the Board wasn't sure, then she recommended holding on the vote. Mr. Formella said he wasn't convinced that it was appropriate for the Board to consider all the new information, noting that the appeal was based on information that the City Council didn't have before, and he thought the Board should deny the appeal. Ms. Walker said they were valid concerns and agreed that the case should be postponed for more information. She said the Planning Department would not get any more information and would return with a report from the Legal Department, whereupon the Board could decide what to do.

DECISION OF THE BOARD

*Ms. Eldridge moved to **postpone** the vote, and Mr. Formella seconded.*

Ms. Eldridge said that, based on the advice from the Planning Department, it was unclear what type of appeal the Board had and that it needed to be reviewed by the Legal Department. Mr. Formella concurred. He said he thought it was important to have an answer from the Legal Department as to whether the Board could rely on the original decision or whether someone could appeal and present all new information.

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

Mr. Mulligan recused himself from the petition, and Alternate Mr. Hagaman took a voting seat.

B) 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. *(This petition was postponed at the August 20, 2019 meeting.)*

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant. He distributed a petition signed by neighbors in support of the project. He reviewed the petition, noting that the variance was denied several months before and that it was now a *de novo* case. He reviewed the petition and the criteria and said the criteria would be met.

Mr. Hagaman asked how much square footage per lot was buildable with the easement. Attorney Pelech said there was 7,500 square feet of buildable lot area. Chairman Rheume said the case was about street frontage and the concern was about creating a rhythm in the neighborhood that would be different by having three houses close together. Attorney Pelech said the lots on Mangrove Street were oriented toward Mangrove Street, and the house on Kearsarge Way and Orange Street had more frontage but was a 1,500-s.f. lot. He said the lot behind it had frontage on Oak Street but not Orange Street. He noted that they were also corner lots that had to meet both frontage requirements. In response to further questions from Chairman Rheume, Attorney Pelech said if the Board found that the granted variance would not alter the character of the neighborhood or wouldn't threaten the public's health, safety, or welfare, then the petition met the criteria. Chairman Rheume said the Board had the opportunity to look at either one.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Vice-Chair Johnson said the amount of relief sought in the layout of the three proposed lots was reasonable and would fit into the neighborhood's character. He said the area was different from others on Kearsarge Street because there were a lot of odd-shaped properties. He said he would support a motion to approve. Mr. Lee agreed. He said the neighbors approved the project, and he felt that an 83-ft frontage next to a 100-ft frontage would be indistinguishable.

Mr. McDonell disagreed, noting that 83 feet was close to 100 feet, but the way it was achieved was more misleading than just looking at the numbers. He said there would be three compliant lots by square footage, but the fact that a large portion of each of those lots would be encumbered by the conservation easement left relatively small lots that were similar to lots on Mangrove Street and Oak Street. He said the neighborhood was more like what was seen on Kearsarge Way. He concluded that the way the lines of the three lots had to be set up would alter the character of the neighborhood, and he found no hardship. Mr. Hagaman agreed and explained why he hadn't heard anything new stating that the application didn't fail on two criteria. Chairman Rheume said he previously had a lot of concerns about the way the property lines ended up, even though he understood the reasons why and the Planning Board's concern. He said that part of it also was that the Board was looking at a frontage variance and it came down to the rhythm of the neighborhood. He said Kearsarge Way was wider and more open than Mangrove Street with its narrow lots, but an argument could be made that the entrance to Kearsarge Way had a cluster of four homes that was tight. He concluded that he could support the case upon rehearing and rethinking the way it would meet the criteria. Vice-Chair Johnson said if the property were split into lots, two houses in a row could be built that would be significantly bigger than all the other houses, which would alter the neighborhood's character more. Mr. Lee said the proposal was not contrary to public interest because he felt that the petition signed by the neighborhood residents carried more weight than the public at large. Mr. Formella said he would support a motion to approve because he felt that the applicant was not asking for enough relief that would alter the neighborhood's character.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variance for the application as presented. Mr. Formella seconded.*

Mr. Lee said granting the variance would not be contrary to the public interest because it was an opportunity to have three modest-sized houses, which would not violate the spirit of the ordinance. He said substantial justice would be done by allowing three modest houses to be built on those lots. He said granting the variance wouldn't diminish the value of surrounding properties because three new houses would be an enhancement. He said the hardship was that the lot was configured such that there was no fair and substantial relationship between the purpose of the ordinance and its specific application. He said the proposed use was a reasonable one.

Mr. Formella concurred, adding that granting the variance would not alter the essential character of the neighborhood and would result in lot sizes that were complimentary to the rest of the neighborhood. He said it wasn't an either/or test because it had to satisfy both prongs. He said substantial justice would be done and that he didn't see any gain to the public by denying the petition but could see a loss to the applicant. He also thought the configuration and size of the lot distinguished it from others in the neighborhood.

Chairman Rheume said he would support the motion, noting that the relief requested on the lot was within the boundaries of the spirit of the ordinance in terms of separation and distance between the properties.

*The motion **passed** by a vote of 5-2, with Mr. McDonell and Mr. Hagaman voting in opposition.*

Mr. Mulligan and Mr. Parrott recused themselves from the petition, and Alternates Ms. Eldridge and Mr. Hagaman assumed voting seats.

C) 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. *(This petition was postponed at the August 20, 2019 meeting.)*

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicants. He reviewed the petition, noting that the two townhouses would face one another. He reviewed the criteria in detail.

Mr. Hagaman asked what drove the desire for four units versus three units that would not require a variance. Attorney Pelech said the esthetics wouldn't be pleasing and that they had also considered a duplex but the existing home's condition wasn't capable of rehabilitation.

Mr. McDonell said the hardship argument included special conditions that the lot was large with a lot of open space. Attorney Pelech agreed, noting that it was the only lot of comparable size and open space. Mr. McDonell said that, due to the special conditions of the lot, the Board had to say there was no relationship between the purpose of the ordinance and its application to the lot. Attorney Pelech said the zoning shouldn't reflect what actually existed on the ground that included several properties that were less than 3,500 square feet.

Chairman Rheume agreed that the properties along Islington Street were probably not compliant with the new zoning, but he said they were in a separate zoning district that had a lesser requirement of 3,000 square feet per dwelling unit. Attorney Pelech said there were several multi-family homes in that district with small lot areas per dwelling unit. He said the proposed living area of each townhouse unit was about 2,100 square feet.

Chairman Rheume opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

Charles Cocchiaro of 45 Salem Street said he had lived in his home for 68 years and thought it would be difficult to live next to two tall buildings. He said the project would change the neighborhood's character.

Elizabeth Bratter of 159 McDonough Street said the project would be a substantial change in the neighborhood's character of single-family homes and would diminish surrounding property values, and there was no hardship because the applicant could stay within the minimum lot size.

Mike Mosca of 401 Islington Street said he was against the project due to esthetics. He said it would not fit into the neighborhood and would cause parking issues.

James Field of 286 Cabot Street said he was the rear abutter and thought the new construction should abide by current zoning because the lot was not unique other than being one of the few open space lots left in the neighborhood. He said the proposed architecture had no correlation to existing structures, was turned sideways, and consisted of two very long and tall buildings that would change the existing pattern of the neighborhood and increase traffic.

Brandon Terry of 209 McDonough Street said the project was not in line with the rest of the neighborhood and did not follow the City's Master Plan.

Stan Smith of 304 Cabot Street said he agreed that the project was not in keeping with the typical architecture of the area.

John Golumb of 30 Salem Street said the project would not fit in with the neighborhood's character because it looked nothing like the existing houses, and the facts that the buildings were turned sideways was unlike anything in the area.

Jennifer Meister of 287 Cabot Street said she agreed with all her neighbors that the project did not fit into the neighborhood.

SPEAKING TO, FOR, OR AGAINST THE PETITION

James Field of 286 Cabot Street said that 304 Cabot Street was a multi-condo that was an existing building under the new zoning. He said the neighborhood was being squeezed in on all sides and the neighbors wanted to keep the architectural character per the 2025 Master Plan.

Cynthia Vigdor of Islington and Salem Street said she pictured the project as a monster building, like several on State Street.

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

DISCUSSION OF THE BOARD

Mr. McDonell said the applicant had to show that he met the burden of a hardship by showing first that the property had special conditions that distinguished it from others in the area. He agreed that the property did have special conditions but noted that the Board had to say that, due to those special conditions, a fair and substantial relationship did not exist between the purposes of the ordinance and its application to the property. He said he didn't see the connection between

the special conditions of the lot being big with green space and the second point. He said he could envision a scenario where the Board was asked to approve a lot that had a lower lot-area-per-dwelling unit than allowed and the special conditions would be a lot of green space between the actual boundary of the applicant's lot and where the pavement began. He said a special condition like that would make the lot seem larger than it was, and because of that special condition, he could buy the argument that a relationship existed between the purpose of the ordinance and its application to that property. However, in the applicant's case, he said he didn't see how the special conditions led one to that conclusion and didn't think a hardship was articulated. He said the petition also failed to meet the public interest and spirit of the ordinance criteria. He said it wasn't a popularity contest and that he would be interested in hearing opinions of realtors and architects, but it didn't seem to be in keeping with the neighborhood's character. He said it was unfair to lump the property in with the properties that abutted Islington Street, even though it was adjacent, because they were in a different zone and it wasn't fair to expect the Board to consider them part of the same neighborhood in making their determination.

Mr. Hagaman agreed, noting that one of the examples given by an abutter was a building converted to a multi-unit structure but within the existing structure. He said the Board wasn't talking about that kind of situation where the hardship was more connected to the property and what was being requested, but were talking about two new structures of four dwelling units that fell short of the lot-area-per-dwelling-unit requirement, where three units would fall nicely within those requirements and not need a variance, so he had a hard time seeing the hardship. He said the four dwellings fell short of the first criteria and would alter the essential character of the neighborhood, beyond whether the buildings were just condos or townhouses or multi-dwelling units but also the structures themselves.

Ms. Eldridge said she agreed that the project would change the essential character of the neighborhood and would be a detriment to Salem Street. Chairman Rheaume described a few similar projects in the City but noted that they were harmonious with the neighborhoods. He said the application was not in keeping with the character of the neighborhood because it looked very different, and that it was clear that the project did not meet the Board's criteria by allowing the extra dwelling unit. He said he saw nothing unique about the shape of the lot that would drive the need for an extra dwelling unit.

DECISION OF THE BOARD

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

Mr. Hagaman said that all the Board's comments factored in. He said the application had to fail only one criterium and that the Board had discussed several failed criteria. He said it would be contrary to the public interest, and that moving from a third to a fourth dwelling unit and diminishing the lot-area-per-dwelling requirement from 3,500 square feet to 2,700 square feet would be out of character with the surrounding properties. He said it wasn't a debate over whether a duplex structure was permitted but rather how the townhouses were designed and positioned as well as the clustering effect on Salem Street. He said the literal enforcement of the

provisions of the ordinance would not result in an unnecessary hardship, noting that he didn't see a connection that was justified in favor of the applicant for many of the reasons the Board discussed. He said there were no special conditions that would warrant that particular variance. He said it was a large property where one could build another structure and have as many as three dwelling units, but reaching for a fourth unit didn't generate any kind of hardship.

Mr. McDonnell concurred, adding that the Board had to think of the neighborhood as being the neighborhood back from Islington Street and consider the different zone there.

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

IV. OLD BUSINESS

A) Case 8-12. Petition of Foundry Place LLC for property located at **0 Hanover Street (aka 181 Hill Street)** for construction of a six story 60' hotel with interior parking wherein the following variances are required: a) from Section 10.5A43.31 and Section 10.5A46.10 to allow a six-story 60-foot tall building where a five-story, 60-foot tall building is permitted; b) from Section 10.1114.21 to allow 54 valet-only parking spaces using a two-car lift system where 10 spaces do not meet the parking depth requirements; and c) from Section 10.1114.32(a) to permit a valet-only lift system which requires passing over another parking space or moving another vehicle where both requirements are prohibited. Said property is shown on Assessor Plan 138, Lot 62 and lies within Character District 5. *(This petition was tabled at the August 27, 2019 meeting for additional Board discussion.)*

Chairman Rheaume reviewed the petition's history, noting that the petition was tabled because it had been a difficult case at the end of a long meeting. He cited the New Hampshire Board of Adjustment Handbook that stated that the Board could render a decision for a hearing at a later time. He said the Board had closed the public hearing but had received additional information from the public since then. He asked the Board members whether they needed the additional input to make their decision or whether the public hearing should be re-opened. Ms. Walker said that once the public hearing was closed, additional information should not be considered, but she noted that it wasn't clear in the local regulations. After some discussion, the Board decided to re-open the public hearing and rehear the petition.

*Vice-Chair Johnson moved to **re-open** the public hearing and to **continue** to hear the case at the October 15, 2019 meeting. Mr. Parrott seconded.*

Vice-Chair Johnson referred to the Board's comments in making the decision, noting that the biggest decider was the written testimony that the Board received. He said it was fairness to rehear the petition. Mr. Parrott concurred and had nothing to add.

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

It was moved, seconded, and passed unanimously to go past ten o'clock.

V. NEW BUSINESS – PUBLIC HEARINGS

Mr. Mulligan recused himself from the petition, and Alternate Ms. Eldridge took a voting seat.

1) Case 9-1. Petition of 56 Middle Street LLC for property located at **56 Middle Street** wherein relief was required from the Zoning Ordinance to convert to a duplex including the following variance: a) from Section 10.5A41, Figure 10.541A and Section 10.5A43.60 & Figure 10.5A43.60 to allow a duplex in the Downtown Overlay District where it is not permitted. Said property is shown on Assessor Plan 126, Lot 19 and lies within the Character District 4-Limited and the Downtown Overlay District.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tom Watson was present on behalf of the applicant. He reviewed the property's history, noting that the property sat on the edge of the Downtown Overlay District (DOD). He said the applicant worked out an agreement with the neighbors and solved all the issues from the previous version of the proposal. He reviewed the criteria and said they would be met. He submitted letters of approval from the abutters.

Mr. Formella noted that the applicant appeared before the Board in late 2018 for a variance to convert the building to residential use for a single-family but was back only a few months later for a duplex. He asked for the reason why, and also why it was a hardship. Attorney Watson said the single-family residence economically wouldn't do the property justice, and he felt that just because one use had been found reasonable didn't mean it precluded other reasonable uses.

Chairman Rheume opened the public hearing.

Christopher Mulligan of 74 Austin Street said he owned a condo at 487 State Street and had reached an agreement that resolved the previous issues raised by abutters. He said that he and the other abutters now had clarification as to their rights and responsibilities for a shared parking lot and access easements. He said it would improve the values of the micro neighborhood.

Pat Driscoll of 495 State Street said he agreed with Mr. Mulligan and that it was the same for his property. He said the ability for him or his guests to park in his driveway at certain hours was removed in an effort to come to an agreement, and he was in favor of the petition as long as the parking agreement was recorded.

Steve Bergeron of 47 State Street said he was fine with the project because of the new easement agreement that solved his previous issues.

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

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

DISCUSSION OF THE BOARD

Ms. Walker clarified that a two-family use was allowed in the District, but the issue was that there was no ground-floor residential use in the proposal and that the building type of a duplex was not allowed. Ms. Eldridge said she would approve the petition because the Board had reviewed it extensively and their parking concerns had been resolved.

DECISION OF THE BOARD

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

Mr. Parrott noted that he was one of the Board members who had seen problems for the adjacent properties because, even though the property itself didn't require parking due to the peculiar arrangement with the cross easements, the proposal affected the other properties in terms of property values. He said his concerns had been resolved. He also noted that the building worked as well as a duplex as it did for a single and also worked well in that location. He said it was a residential use that had been there for a long time, and the neighborhood was an unusual one in that there were various uses that included multi-family residential uses. Mr. Parrott said that granting the variance would not be contrary to the public interest or to the spirit of the ordinance. He saw no conflict with the implicit or explicit purposes of the ordinance because the project would fit into the neighborhood and would not injure public rights as a duplex. He said granting the variance would do substantial justice because the benefit to the applicant would not outweigh any benefit to the public and that the advantage to the owner in developing the building as a duplex was obvious. He said the value of surrounding properties would not be diminished because the parking conflicts were resolved and the value of all the properties involved would be enhanced. He said the hardship was the peculiar location of the property on the very edge of the DOD and that the properties surrounding it were not characteristic of the DOD as well, so the applicant's property deserved some relief. He said the project clearly met all the criteria.

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

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

Mr. Mulligan was excused from the petition, and Alternate Mr. Hagaman took a voting seat.

2) Case 9-2. Petition of Lindsay J. Gee and Erin Heffron for property located at **978 South**

Street wherein relief was required from the Zoning Ordinance to reconstruct entryways for both units including the following variances: a) from Section 10.521 to allow a 0.5' secondary front yard where 30' is required; b) from Section 10.521 to allow 34.5% building coverage where 20% is the maximum allowed; and c) from Section 10.321 to allow a lawful nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the ordinance. Said property is shown on Assessor Plan 150, Lot 8 and lies within the Single Residence B District.

SPEAKING IN FAVOR OF THE PETITION

Bill Shefer of 994 South Street was present on behalf of the applicants. He said he was an abutter who accessed the applicant's property from the rear as a safety issue. He said the applicant's steps went over the property line and that a right-of-way to his house existed through the applicant's property, and that the proposal was for the safety of everyone who used Rand Court.

Chairman Rheume opened the public hearing.

Dexter Robblee of 2 Rand Court said the applicant was asking to put the door 90 degrees so that it exited into their driveway. He said it wouldn't harm the neighborhood and would increase everyone's safety. He said it was a wonderful project and that he supported it.

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

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

DECISION OF THE BOARD

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

Vice-Chair Johnson said he considered the request to be minor because, although the secondary front yard setback was the relief being asked for, it was a small amount more compliant than what actually existed. He said the change in building coverage from what currently existed was an insignificant amount. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the proposed changes to the two entries were logical, and both were redirected to point in a more appropriate direction to the stairs. He said changing the orientation of the stairs so that they did not point toward the street created a safe environment that would not threaten the public's health, safety, and welfare. He said granting the variances would do substantial justice because it was a significant benefit to the applicant to create a safer environment and a more code-compliant set of stairs, bringing the setback slightly in to become more compliant, and wasn't a benefit that would outweigh the benefit to the public. He said the value of surrounding properties would not be diminished because bringing the two entryways into more compliance by being more off the street and

pointing in a more reasonable direction to the stairs would add value to the house that would trickle down to the neighboring houses. He said literal enforcement of the ordinance would result in an unnecessary hardship because there were special conditions to the house, including that the house was situated facing South Street but also had Rand Court to the side at an angle, which pinched in quite a bit toward the back of the house. He said the property lines on both sides pinched in, so what was somewhat close to being a compliantly-sited house toward the front of the property became non-compliant because the two property lines on the side pinched in on top of that. He said the house technically was on a corner lot that wasn't much of a corner lot because it had very low traffic on a dead-end street that was accessed by three families at the most. He said for those reasons he felt that the variances should be granted.

Mr. Hagaman concurred with Vice-Chair Johnson. He said the variance requirement was largely safety driven, and in order to abide by the secondary front yard, one would have to basically knock down the building, so the slight improvement in that setback was an admirable effort, given the shape of the property and the position of the house.

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

VI. OTHER BUSINESS

A) Parking Principles. *(This item is continued from the August 27, 2019 meeting.)*

The discussion was postponed to a future meeting.

VII. ADJOURNMENT

*It was moved, seconded, and passed unanimously to **adjourn** the meeting at 10:48 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary