

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

7:00 P.M.

**September 24, 2019,
Reconvened From
September 17, 2019**

MEMBERS PRESENT: Chairman David Rheaume, Peter McDonell Arthur Parrott, Jim Lee, Chris Mulligan, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: Vice-Chairman Jeremiah Johnson; John Formella

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume stated that Vice-Chair Johnson and Mr. Formella were absent and that Alternates Ms. Eldridge and Mr. Hagaman would vote on every petition.

It was moved, seconded, and passed to elect Mr. Parrott as Acting Chair for the petition from which Chairman Rheaume was recused later on in the meeting.

I. OLD BUSINESS

A) Request for Extension – 1338-1342 Woodbury Avenue

Chairman Rheaume read the petition into the record.

*Mr. Mulligan moved to **grant** the request for extension, and Mr. Parrott seconded.*

Mr. Mulligan noted that the applicant was in the process of getting financing for the project. He said it was a new manufacturing housing cooperative with a lot of challenges and that he had no problem extending it. Mr. Parrott concurred and had nothing to add.

Chairman Rheaume said he would support the motion but was becoming concerned about the number of extension requests, especially when they were submitted at the last minute. He noted that two-year extension timeframes were recently allowed but had to be exceptional circumstances. He recommended that the Planning Staff make it clear to applicants that they must have good reasons for requesting extensions and that they provide sufficient notice.

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

II. NEW BUSINESS - PUBLIC HEARINGS

1) Case 9-3 Petition of Helen Moore for property located at **1 Ashland Street** wherein relief was required from the Zoning Ordinance to demolish existing garage and construct a new 18' x 22' garage including the following variances: a) from Section 10.573.20 to allow a 5'6" left side yard where 10' is required and a 9' rear yard where 12' is required; b) from Section 10.521 to allow 28% building coverage where 25% is the maximum allowed; and c) from Section 10.321 to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance. Said property is shown on Assessor Plan 209, Lot 16 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

The contractor Alan Kristoff was present on behalf of the applicant. He reviewed the petition and referred to his previously-submitted criteria.

Chairman Rheume opened the public hearing.

Johanna Lyons of 18 Cutts Street said she was an abutter and noted that the applicant worked hard to get the support of the neighbors for the garage improvement.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. McDonell said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said he couldn't see how the teardown of the existing garage and building a similar garage would alter the essential character of the neighborhood or pose a threat to the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant in having a new garage to replace the existing one was clear, and he saw no harm to the neighbors or public. He said granting the variances would not diminish the values of surrounding properties and thought the project would potentially increase the values because a nice new garage would replace a dilapidated old garage. He noted that the neighbor to the side was in support and that the neighbor to the rear hadn't spoken for or against the project. He said there would be a fair amount of space between the neighbor to the rear and the back of the lot. He said the required rear setback for a garage was 12 feet and what was proposed was nine feet, which he thought was a reasonable request. He said that, on the left side,

a 10-ft setback would be hard to accommodate on a lot of that size, which was really driving the request, and that keeping it in that corner would not diminish the values of properties in the area. He said the literal enforcement of the ordinance would result in unnecessary hardship because there were special conditions including the size of the lot and the location of the existing garage and the house dictating where the new garage would be placed. He noted that there were similar-sized lots in the area, but taken together with the special conditions, a relationship did exist between the purpose of the ordinance, which was to provide space between structures on different lots, and the special application of the ordinance to the property. He said the use was a reasonable one and that the variances should be granted.

Mr. Hagaman concurred and stated that he had nothing to add.

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

2) Case 9-4. Petition of Brendan Robert Cooney and Megan Tehan for property located at **57 Mt. Vernon Street** wherein relief was required from the Zoning Ordinance for a second story addition with front entry deck and condenser unit including the following variances: a) from Section 10.515.14 to allow a 6' setback for a condenser unit where 10' is required; b) from Section 10.521 to allow a 4' side yard where 10' is required; 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 111, Lot 1 and lies within the General Residence B District.

SPEAKING IN FAVOR OF THE PETITION

The applicant Megan Tehan was present and reviewed the petition and criteria.

Chairman Rheaume asked whether everything opened up to the ceiling in the area of the current house that had the dormer at the front. Ms. Tehan stated that it did.

Chairman Rheaume opened the public hearing.

Jean Spear of 49 Mt. Vernon Street said she was the closest direct abutter and was in favor of the project because it would expand the house and accommodate the growing family.

Mary McElwain of 259 South Street said her backyard overlooked the applicant's property and she was in favor of the variances being granted because she thought they were minor. She said the neighborhood had two-story and three-story homes and no two were alike.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Hagaman moved to **grant** the variances for the petition as presented, and Ms. Eldridge seconded.*

Mr. Hagaman said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance; the variance requested was a modest left yard setback within the 10-ft requirement that would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He noted that many of the surrounding properties were similar in size to what was proposed, and the applicant was building an addition within the existing footprint of the building itself, and it was a modest expansion. He said granting the variances would do substantial justice because there would be no gain to the public that would outweigh the loss to the applicant by not making the changes to the house. He said the values of surrounding properties would not be diminished and most likely would be increased. Relating to hardship, he said the house had special conditions because it was already situated within the setback, only two feet away from the left yard, and the addition would be on the other side of the house that was four feet from the lot line, and it wouldn't expand the footprint of the building itself. He pointed out that the lot was small, oddly shaped, and below the minimum requirements. He said it was a reasonable use, a modest expansion of a single-family home in the appropriate district, and met all the criteria.

Ms. Eldridge concurred and had nothing to add.

Chairman Rheame said he would support the motion, noting that another key aspect was that the house was up against a municipal lot and wouldn't impact the light and air of the neighbors, and that the condenser was in the most logical location. He said the house was very modest and the request for a modern addition was also modest and deserved to be granted.

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

Mr. McDonell recused himself from the following petition.

3) Case 9-5. Petition of Kenneth W. Young for property located at **346 Colonial Drive** wherein relief was required from the Zoning Ordinance for the demolition of existing garage and construction of a new single car garage with accessory dwelling unit above including the following variances: a) from Section 10.521 to allow a lot area of 6,099 square feet where 15,000 is the minimum required; b) from Section 10.521 to allow 23.5% building coverage where 20% is the maximum allowed; 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; d) from Section 10.521 to allow a 12' rear yard where 30' is required; and e) from Section 10.521 to allow a 19'6" front yard where 30' is required. Said property is shown on Assessor Plan 260, Lot 136 and lies within the Single Residence B District.

Chairman Rheume noted that the petition was previously denied. He asked the Board members if they had Fisher v. Dover concerns, and they said they did not.

SPEAKING IN FAVOR OF THE PETITION

Attorney Eric Maher was present on behalf of the applicant and introduced the applicant Ken Young and the project designer Charles Hoyt. Attorney Maher said the applicant brought the garage and ADU forward to make them more in line with the principal dwelling per the Board's previous suggestions. Mr. Hoyt said the applicant listened to the neighbors' input and made a different and better design, which he reviewed. Attorney Maher reviewed the criteria, noting that the only abutter who was previously opposed was no longer opposed.

Chairman Rheume said the applicant and architect did a good job of addressing the Board's concerns but thought they could run into issues from the Planning Board in obtaining a Conditional Use Permit (CUP). Attorney Maher said they modified their design after submitting a CUP application and receiving comments from the Planning Department.

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 the applicant made a cogent argument because the lot was a strange and unique one on a circular drive that impacted the number of setbacks it had, namely front yard setbacks on three sides that created a strange building envelope, which he thought might have driven the original design to set the existing garage back and offset it. He said the architect should be commended for taking to heart the Board's suggestions to slide everything forward and correct the offset, which satisfied the objections of the nearest abutter and pulled the 5-ft rear yard encroachment back to a more conforming twelve feet. 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 remain as residential, and there would be no negative impact on the public's health, safety, or welfare. Substantial justice would be done because the loss to the applicant would far outweigh any benefit to the public if the petition were denied after considerably improving the most severe encroachment of the rear yard setback. He said granting the variances would not affect surrounding properties because the most glaring nonconformities would be brought into conformity. He said the modest addition to the modest house would have a beneficial effect on surrounding property values. He said the hardship was that it was on the curve of Colonial Drive and had frontage on three sides of the house, which were special conditions of the property that distinguished it from others in the area so that there was no fair and substantial relationship between the purpose of the setbacks or the building coverage

provisions and their application to the property, given its unique location and small size. He said it was a reasonable use, a residential use in a residential zone, and met the criteria.

Mr. Parrott concurred. He said he was one of the people who was concerned with the previous design because it encroached too much on the backyard, to the detriment of the adjacent property in terms of its size and location, both of which had been largely cured by the redesign. He said the design would look almost natural to the house. He agreed about the difficulty of the lot and the shape. He said the stairs would be on the side of the building that faced the streets, which wouldn't interfere with anyone in the neighborhood.

Mr. Hagaman said he also had not supported the prior rendition but thought it was a substantial improvement that clearly met all the criteria. Chairman Rheame said he would support the motion, noting that the petition was a good example of further thinking about a problem that resulted in an elegant solution.

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

Mr. McDonell resumed his voting seat.

4) Case 9-6. Petition of D'Angelo Inc, owner and Stephen and Claire McLaughlin, applicants, for property located at **1981 Woodbury Avenue** wherein relief was required from the Zoning Ordinance to replace existing pylon sign with new sign including the following variance: a) from Section 10.1251.20 to allow a 140 square foot freestanding sign where 100 square feet is the maximum size allowed. Said property is shown on Assessor Plan 215, Lot 7 and lies within the G1, Gateway Neighborhood Corridor District.

SPEAKING IN FAVOR OF THE PETITION

Stephen McLaughlin was present on behalf of the applicant and introduced the sign representative Tim Fisher. He reviewed the petition and criteria.

Mr. Hagaman asked whether three portions of the building were empty. Mr. McLaughlin said they had one vacancy and a future vacancy and that not all tenants were represented on the sign. He said there were ten units in the plaza. Mr. McDonell asked what the existing sign's dimensions were, and Mr. McLaughlin said it totaled less than 100 square feet. He said the current sign was 20 feet high and that the new sign wouldn't be much higher. Mr. Fisher added that the Dollar Tree sign was 12 feet wide and wouldn't exceed a height of 20 feet. He also noted that the sign layout was different, and he submitted drawings and dimensions to the Board. Mr. McLaughlin said they made the modifications because the sign didn't meet the minimum height. Mr. Lee asked what the pylon sign and billboard signs currently were. Mr. McLaughlin said D'Angelo's had their own sign and wouldn't be part of the package.

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 variance as amended during the presentation, and Mr. Lee seconded.*

Mr. Parrott said it was a large request in terms of percentages but that it was a large intersection as well, so he thought the sign's size would look okay because it was quite a bit of open space in a large intersection. He noted that there was nothing else there, so the larger sign wouldn't cause any sight problems, and he thought the design would be more attractive than the existing one. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the applicant was asking for a reasonable increase that wouldn't alter the essential character of the neighborhood, which was 100 percent commercial. He said the new sign wouldn't be much different from what had been there for a long time, so there would be no threat to the public's health, safety, or welfare or any injury to public rights. He said granting the variance would do substantial justice because the benefit to the applicant would not be outweighed by any gain to the general public and the sign would be more visible and less distracting to people who were trying to find the address at that intersection. He said values of surrounding properties would not be impacted, noting that a larger sign with a better design wouldn't have a detrimental effect on the applicant's property and surrounding properties. He said there were special conditions to the property, including that the mini mall was larger than the other properties on the other corners, so the property deserved a larger sign. He said the petition clearly met all the criteria and should be approved.

Mr. Lee concurred and said the new sign would be more aesthetically pleasing.

Chairman Rheume said he would support the motion. He said the sign could be in compliance with the ordinance, but the unique element that contributed to the hardship was the high number of units in the structure. He said the resulting signage per unit was modest and drove the overall size of the sign. He also noted that all the tenants had no concerns. He said the property was constructed on a corner location, so the location for the sign was logical and the actual space per unit was what the ordinance was trying to achieve.

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

5) Case 9-7. Petition of KWA LLC, owner, Barre and Soul, applicant, for property located at **165 Court Street** wherein relief was required from the Zoning Ordinance to place signage above the ground floor on both facades including the following variance: a) from Section 10.1242 to allow more than one sign above the ground floor on two facades. Said property is shown on Assessor Plan 116, Map 27 and lies within Character District 4.

SPEAKING IN FAVOR OF THE PETITION

The sign representative Craig Moore was present on behalf of the applicant and reviewed the petition and criteria. He noted that they had two current signs on Court and Fleet Streets and wanted graphics on their windows to help identify their branding and also add privacy.

Mr. Mulligan asked whether the applicant had received feedback from the Historic District Commission (HDC). Mr. Moore said they had not been before the Commission. Mr. Mulligan said the design didn't look historic and was concerned that the HDC would not approve it. Chairman Rheume asked Mr. Stith what the Planning Department's issues were with signage, the façade, and the projecting sign. Mr. Stith said the applicant had two projecting signs, one on each street, and that there were some window panes that had no graphics or signage. He said the Planning Staff considered a window's rainbow graphics or text signs, and that each window would be a separate sign. He said the issue wasn't total square footage but was the fact that there was more than one sign on each façade. He said the applicant could have one sign on each façade. He said the whole pane was counted and was within the requirements, and that the rainbow was considered signage and not art because it was part of the applicant's branding.

Andrea Logan, Barre and Soul Manager, said the graphics were part of a branded campaign and not the company's natural logo. In response to the Board's questions, she said the graphics didn't obscure the whole window and that the graphic was a stripe, with the rest being a clear window.

Mr. Parrott said he wasn't sure who considered the windows with dancers in them signs or not signs. Mr. Stith said the Planning Department considered them all signs by definition of a sign, and he read the definition: 'Signs need not include text and may consist of stripes, spots, or other recognizable designs, shapes, or colors.'

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Chairman Rheume said the zoning ordinance could better define art or a sign. Mr. Mulligan said he would be amazed if the HDC didn't push back on the design. He said the Board had to consider that there was something unique about the property such that it wasn't necessary to enforce the number of signs-per-façade rule, but he had no heartburn about it. Mr. Hagaman said a lot of second-story businesses would like decals, glazing, or print to put in their windows. Chairman Rheume agreed. He said it was a corner lot but that the applicant already had existing signage that fulfilled the requirements for having one sign on each façade, so he didn't see any characteristics of the property that would be very different from someone else wanting to do the same thing, and he thought the request for variances failed. Mr. Lee said he didn't think that chopping up a graphic to fit in all those windows would add to the visual appeal. Ms. Eldridge said she thought it felt like overkill, noting that the rainbow strips didn't identify the building and every pane was covered with something.

DECISION OF THE BOARD

*Mr. Parrott moved to **deny** the petition as presented, and Mr. Lee seconded.*

Mr. Parrott said he didn't see a hardship inherent in the property as required by the Board's criteria. He said the underlying condition in the hardship criterion was that, due to the special conditions of the property that distinguished it from others in the area, there was no fair and substantial relationship between the general purposes of the ordinance provision and its specific application to the property, and the proposed use had to be a reasonable one. He said he had no problem with the proposed use but found no special condition of the property that distinguished it from others in the area. He said there was nothing unusual or distinctive about the building or property in that area, nor did the applicant address some particular problem with the location that would argue for hardship. He said he saw no need to review the other criteria because the petition failed the hardship criteria, and he said the Board should reject the petition.

Mr. Lee concurred and said the property could be used in strict conformance with the ordinance because it had been successfully operating as a business in its current condition.

Mr. Hagaman said he struggled with the petition because it met a lot of the criteria but fell short on the hardship. He said it was another example of an opportunity for the City to consider how it defined a sign because it was arguable that some signs should not be considered signs. Chairman Rheaume said if the ordinance stated that a business on a corner could only have one sign on one façade, and customers coming down the road couldn't see a sign on another street, that would be a hardship that the Board would think was unique and made sense; but in the applicant's case, he didn't see that compelling difference about the property.

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

6) Case 9-8. Petition of Harry S. Furman & Kathleen E. Straube for property located at **557 State Street** wherein relief was required from the Zoning Ordinance to demolish existing rear addition and construct new 2-story addition which requires the following variances: a) from Section 10.521 to allow a 0.6' right side yard where 10' is required; and, b) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance. Said property is shown on Assessor Plan 137, Lot 33 and lies within the General Residence C District.

SPEAKING IN FAVOR OF THE PETITION

The applicant Kathleen Straube was present to speak to the petition. She said they had received previous approval for the project but were before the Board because of a foundation wall.

Chairman Rheaume asked whether the applicant would be closer to the neighboring property. Ms. Straube said she wouldn't and that the proposal was the same except for the foundation wall.

She said the hardship was that there was a giant pit in the backyard and they couldn't finish the framing, and that rain had ruined parts of the house.

Mr. Mulligan said the applicant originally built an addition to the existing footprint but was now doing more work because of the foundation. Mr. Stith said the initial application showed a second-story addition on the existing rear addition, but because the foundation was failing, the applicant removed it and had to come back before the Board.

The contractor Derek Bercado said the space was enclosed and inaccessible, so they hadn't known about the rotting foundation.

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, and Mr. McDonell seconded.*

Mr. Mulligan said the Board approved almost identical relief a few months before. He said granting the variances would not threaten the essential character of the neighborhood or be contrary to the public interest or the spirit of the ordinance, and that substantial justice would be done because the loss to the applicant if the Board stopped the project at that stage would dwarf any gain to the public. He said the values of surrounding properties would not be diminished, noting that the Board already found that surrounding properties wouldn't be affected by essentially the same project. He said literal enforcement of the ordinance would result in an unnecessary hardship because the property was old and had several funky additions in the built environment, which were special conditions that distinguished it from others in the area. He said there was no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. He said it already violated the setback. He said it was a reasonable use, a residential use in a residential zone, and met all the criteria and should be granted.

Mr. McDonell concurred and had nothing to add.

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

Mr. Mulligan recused himself from the petition.

7) Case 9-9. Petition of the Roman Catholic Bishop of Manchester and Immaculate Conception Church, owners, Corpus Christi Parish, applicant, for property located at **98 Summer Street** (125 Austin Street) wherein relief was required from the Zoning Ordinance for the demolition of a building to create additional parking including the following variance: a) from Section

10.1113.20 to allow a parking lot between a principal building and a street. Said property is shown on Assessor Plan 137, Lot 1 and lies within the General Residence C District.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin was present on behalf of the applicant. He said they were seeking approval for parking between a principal building on the site and the roadway. He noted that the City changed the parking ordinance so that parking would be screened from the street, but the lot was surrounded by streets, so any parking on the property would need relief. He reviewed the criteria and said they would be met.

Chairman Rheume said he was concerned about the visibility of the parking lot in spite of plantings and landscaping and asked whether the property would be elevated by Austin Street. Project engineer Eric Weinrieb said the parking lot would follow the contour of Austin Street and would slope up. He said that the Technical Advisory Committee (TAC) asked them to attenuate some of the runoff, so they would make the strip between the parking lot and sidewalk a raingarden and have ornamental fencing in between. He said the parked vehicles would still be seen through the landscaping because it wasn't that dense. Mr. McDonell asked about lighting. Mr. Weinrieb said it would comply with City standards for dark-sky lighting and would include lower poles that had a residential feel. He noted that there would be grade changes getting up to the church level that would be lit low.

In response to Mr. Hagaman's questions, Mr. Weinrieb said there were a lot of challenges and very little room because of the grade change to push the lot closer to the church and have more green space between the lot and the building. He said what drove the need for 30 additional parking spaces was that there were 600 seats in the church that required about 240 parking spaces per the ordinance, and that because the project was a parking plan as well as a site improvement project, they found the balance between the parking and beautification. In response to Chairman Rheume's question, Mr. Weinrieb said they had 36 existing parking spaces on the property and proposed 30 more, for a total of 66 parking spaces.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

Mr. Parrott asked if there were plans to put a kiosk, gatehouse, or power-operated barriers. Attorney Loughlin said there was no discussion of any kiosk or gatehouse but that the immediate neighbors could use the parking lot when it wasn't used by church personnel.

DISCUSSION OF THE BOARD

Mr. McDonell said the requested relief was reasonable because, given the context of the site, the applicant would be physically unable to create parking of any kind without relief. Mr. Lee agreed and thought the design was well thought out.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variance as presented, and Mr. Parrott seconded.*

Mr. Lee said there were lot of reasons to grant the variance, including that the property was burdened by all four sides of the street. He said the landscaping plan to buffer the view of the parking lot with the metal fencing seemed well thought out, with ADA-compliant sidewalks. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. The proposed use would not alter the essential character of the neighborhood nor threaten the public's health, safety, or welfare. He said the benefit to the applicant would not be outweighed by any detriment to the general public, and would not diminish the values of surrounding properties. Literal enforcement of the ordinance would result in an unnecessary hardship because the special conditions were that the property was burdened by four sides of the street, so it wasn't possible for the property to be in strict compliance with the ordinance. He said there was no fair and substantial relationship between the general purpose of the ordinance and its application to the property and that the proposed use was a reasonable one.

Mr. Parrott concurred, noting that the property was unusual because it formed its own block, and the applicant would have to have at least two more buildings on the outer corners to comply. He said it was a case where the rule of not having parking in front of a property didn't work.

Chairman Rheume said he would support the motion because the Board had made a good case for the hardship. He said it was an existing nonconforming use that had been there for a long time and, due to its current state, was deficient in meeting the City's parking requirements. He said the applicant had done what they could to minimize the parking lot's appearance and to create the overall effect that the ordinance looked for.

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

Mr. Mulligan recused himself from the petition.

8) Case 9-10. Petition of Lucky Thirteen Properties LLC, owner, and the Bean Group, applicant, for property located at **Sagamore Avenue (at Wentworth Road)** wherein relief was required from the Zoning Ordinance to construct a new business office with associated parking including the following variances: a) from Section 10.1113.20 to allow a parking area to be located between the principal building and a street; and b) from Section 10.1120 to provide zero loading spaces where 1 is required. Said property is shown on Assessor Plan 201, Lot 9 and lies within the Mixed Residential B District.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen was present on behalf of the applicant. He introduced the project engineer Eric Weinrieb, the applicant Michael Beene, and the project architect Mark Gianinny. Attorney Bosen reviewed the petition, noting that they had to pull the building forward due to the setback and wetlands. He said the plans were well received by the City Staff, TAC, and the Conservation Commission and that the project team considered every angle for development, which resulted in the final design. He reviewed the criteria and said they would be met.

In response to Mr. Hagaman's questions, Attorney Bosen said the City did not express concern with potential traffic on Sagamore Avenue. He said the applicant considered having the entrance on Wentworth Road toward the side of the building facing Wentworth Road but were concerned that the right and left turn lanes would create a potential sight line conflict.

Chairman Rheaume asked if the property across the street was fully compliant with the proposal. Attorney Bosen stated it was. Chairman Rheaume asked if there were ways that the parking could be disguised. Mr. Weinrieb explained that they were initially 15 feet back from the street but wanted to create a stronger buffer, which pushed them five more feet into the wetlands buffer. He said they received strong pushback from the different Boards, so they moved it back to ten feet. He said the site was different from the other property, where they were using pervious material for the parking area, so they didn't have to use the ten-ft area as a stormwater management area and the parking lot could be masked better than the Austin Street one. In response to further questions, Mr. Weinrieb said the buffer running along Sagamore Avenue would not cause sight line issues. Regarding whether there might be a new use for the building in the future that wasn't as compatible and might require a loading spot, Mr. Weinrieb said one issue was creating more pervious surface and a larger travel area that wouldn't be used frequently. He said an office environment would not require a lot of delivery vehicles but that the use would be a professional type of use no matter what happened.

Mr. Hagaman asked what was driving the size of the building beyond the 10,000 square feet and the potential of other tenants occupying office space within the building. Attorney Bosen said it would be a single use for the Bean Group. Mr. Parrott asked whether the applicant considered orienting the building at the corner and spreading the parking on both sides so that the lot wouldn't be a monolithic one. Attorney Bosen said they considered it but that it was met with resistance, particularly by the Conservation Commission that noted there was no way to connect the two parking lots and that it would impact the buffer as well. Chairman Rheaume asked what percentage of the lot was impacted by wetlands or buffers. Mr. Weinrieb said he knew that the built infrastructure was out of the 50-ft buffer, making them halfway out of the full buffer.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Hagaman said a lot of the building and parking lot were in the buffer. Chairman Rheaume said the applicant was maneuvering it all around and noted that fifty feet from the buffer was usually the line that was drawn. Mr. Lee said he had no problem with the proposal and that it seemed to be a reasonable use. He noted that he had been a realtor for 38 years and hadn't seen a lot of freight or loading space issues. Ms. Eldridge said she supported the petition because the relief wasn't major. Mr. McDonell said the configuration for what was proposed was reasonable and felt that the corner lot posed special conditions for the lot that differentiated it from other lots, but what troubled him was that the building size was driving the request for 40 parking spaces. He said he understood that the building needed to be that size to accommodate the applicant's planned use, but he was concerned that it would be a bit more of an impact than the lot could support. He said he could see a small building for the same use that would require a lower number of parking spaces and would impose a less onerous impact on the lot. Mr. Stith said there would be 29 parking spaces if the building were 10,000 square feet. Chairman Rheaume said he was torn because what was proposed was probably the best solution for what the applicant was looking for, but his concern was whether the wetlands was the hardship or if the wetlands were dictating how the lot should be developed. He said Sagamore Avenue was an attractive gateway into the community and that people shouldn't have to look at parking as they drove by. He said a berm that disguised the parking from both Sagamore Avenue and Wentworth Road might help. As for the loading spot, he said the current use was one that probably didn't need it, but there were other cases the Board had seen where something quite different happened.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variance as presented, and Ms. Eldridge seconded.*

Mr. Lee said that granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use did not conflict with the explicit or implicit purposes of the ordinance and that substantial justice would be done. Due to the commercial nature of the neighborhood with restaurants and the building across the street, he said he didn't see any diminution of values of surrounding properties. He said the hardship was that there were special conditions of the property that distinguished it from others, including the fact that it was burdened on two sides by streets and burdened by wetlands in the rear and by existing buildings on the other side of the lot, so there was no fair and substantial relationship between the general purpose of the ordinance and its specific application of that provision. He said the proposed use was a reasonable one and thought the application should be granted.

Ms. Eldridge concurred and had nothing to add.

Mr. Hagaman said he was inclined not to support the motion because of the wetlands and the use of the property. He said the building's size was dictating the loading space and number of parking spots, and he thought there could be a better and higher use in terms of the size of the building and size of the lot and how it could be configured if those two things could be taken into consideration. He was concerned that a future use of the building may require a loading space, and he said he hadn't heard enough hardship relating to why a loading space could not be

provided. He said the applicant could include the loading space but that it would be less convenient for them. Chairman Rheume said he was also torn and couldn't support the petition as it was. He thought the loading spot had to be there, and if it dictated a slightly smaller building, the applicant would need less parking spots and a slightly different configuration that would work. He said he wanted a stipulation that there be suitable berming along Sagamore Avenue and Wentworth Road to obscure the parking lot and that the Planning Staff could interpret what acceptable berming would be. He said he was also conflicted about the loading zone. He said he could approve Variance A with the stipulation but would deny Variance B.

*Mr. Lee **amended** his motion to include the stipulation that a suitable berm would be constructed. Ms. Eldridge seconded.*

Mr. McDonell said he was more concerned with the intensity that was driving the need for the request more than he was about the loading dock. He said shrinking the size of the building, adding the dock, and removing a few parking spaces would not decrease the intensity for him.

*The motion **failed** by a vote of 2-4, with Chairman Rheume, Mr. McDonell, Mr. Hagaman, and Mr. Parrott voting against the petition.*

Attorney Bosen said they could go before the Planning Board to get the CUP for reduced parking. Chairman Rheume said he was willing to accept that.

*Mr. Hagaman moved to **grant** Variance A and **deny** Variance B, with the following stipulation on Variance A:*

- *That berming along Sagamore Avenue and Wentworth Road, acceptable to the Planning Department shall be included with any parking.*

Mr. Parrott seconded.

Mr. Hagaman stated that Variance B failed on the hardship criteria. He said there wasn't a special condition of the property that distinguished it from others that would justify setting aside the need for a loading space, especially given the size of the building and its potential future uses. He said that granting Variance A with the stipulation would not be contrary to the public interest and would observe the spirit of the ordinance, and it would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare by having a lot between the primary structure and the road. He said that, given the structure of the lot, being on a corner, and having two streets adjacent to it as well as a wetland in the back made perfect sense to have parking between the primary structure and the street itself. He noted that there was evidence that it would be safer for the community in terms of traffic and road entry and egress. He said that granting Variance A would do substantial justice because there would be no gain to the public that would be outweighed by any loss to the applicant by developing the property that way. He said the values of surrounding properties would not be diminished because the lot was currently undeveloped and improving it would increase its value as well as the values of properties surrounding it. He said literal enforcement of the provision of the ordinance would

result in an unnecessary hardship because special conditions of the property included that it was a corner lot with wetlands behind it, and as a result of putting any structure on the lot and keeping the impervious surface as far away as possible from the wetland and buffer, one would have to put parking between the primary structure and street, so there was no fair and substantial relationship between the general purpose of the ordinance provision and its specific application to the property. He said the proposed use was a reasonable one, a use by right in that given zone.

Mr. Parrott concurred and had nothing to add.

*The motion **passed** by a vote of 5-1, with Mr. McDonell voting against the motion.*

Chairman Rheaume recused himself from the petition, and Acting-Chair Parrott assumed his seat. Mr. Mulligan returned to his voting seat.

9) Case 9-11. Petition of SAI Builders LLC for property located at **Off Elwyn Avenue** wherein relief was required from the Zoning Ordinance to construct a new single-family dwelling on a vacant lot including the following variances: a) from Section 10.521 to allow a lot area and lot area per dwelling unit of 4,996 where 7,500 is required for each; and b) From Section 10.521 to allow 50' of street frontage where 100' is the minimum required. Said property is shown on Assessor Plan 113, Map 28-1 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

Attorney Derek Durbin was present on behalf of the applicant to speak to the petition. He introduced the applicant Patrick Nysten. Attorney Durbin reviewed the petition and criteria.

Mr. Mulligan said the tax map indicated that the lot number of 28-1, which suggested that it was sub-developed off Lot 28. He asked whether there had always been two separate lots. Attorney Durbin agreed and said they weren't involuntarily merged by the City but were kept separate. He said the lot had always been conveyed as a separate lot, and he wasn't sure why the tax map was numbered the way it was but thought it could be because the lot was under common ownership.

Acting-Chair Parrott opened the public hearing.

Cliff Hodgdon of 10 Kent Street said everyone had only 50 feet of frontage on Kent Street or Elwyn Avenue, and that the land was a house block when it was laid out in 1899.

Shannon Palace of 35 Elwyn Avenue said she lived next to the vacant lot and appreciated the building's design but was concerned that the builders could switch the site layout or change the massing after the project was approved, resulting in a driveway that could be next to her home and cause water issues in her basement. Acting-Chair Parrott said the Board had no say over those details and that the Building Department would look at it. Mr. Stith said the applicant had

the right to switch the driveway to the other side of the property as long as it conformed but that he would have to return to the Board if the massing was exceeded.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Durbin said the only thing that changed was that the building was moved back 6.8 feet.

Patrick Nysten said they were working with an architect to design a specific building for the lot and that the massing, scale, style and design elements would be emblematic of the neighborhood.

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variance as presented, and Mr. McDonell seconded.*

Mr. Mulligan said the applicant was seeking to utilize an existing lot of record for an intended purpose that was allowed in the GRA District, a single-family dwelling on a vacant lot. He said the lot area was what it was, as was the frontage, and neither could change, so they happened to be noncompliant with current zoning simply because the lots were created more than a hundred years before. He said it was a classic case for a variance and a classic missing tooth on the block, and what was proposed couldn't be justifiably denied. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the essential character of the neighborhood would remain as residential and the public's health, safety, and welfare would not be threatened. Substantial justice would be done because the loss to the applicant if the Board required strict compliance with zoning for the pre-existing substandard lot would outweigh any benefit to the general public. He said granting the variance would not diminish the values of surrounding properties because the addition of a code-compliant new-construction home of modest size would improve values. He said the hardship was that the property was a substandard and pre-existing lot with special conditions that distinguished it from others in the area because it was the last lot in the neighborhood that was undeveloped, so there was no fair and substantial relationship between the purpose of the frontage ordinance and its application to the property. He noted that lot areas of almost identical size and frontage had thrived in that neighborhood. He said it was a reasonable use, a residential use in a residential zone, that met all the criteria and should be granted.

Mr. McDonell concurred and had nothing to add.

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

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

Chairman Rheume resumed his seat as Chairman, and Mr. Parrott resumed his normal status. Mr. McDonell recused himself from the petition.

10) Case 9-12. Petition of GTY MA/NH Leasing Inc. c/o Nouria Energy Corporation, owner Greenman-Pedesen, Inc (GPI), applicant for property located at **786 US Route 1 Bypass** wherein relief was required from the Zoning Ordinance for an after-the -fact variance for replacement of a 6' fence with an 8' fence located within the rear yard including the following variance: a) from Section 10.515.13 to allow an 8' tall fence to be located 0.5' from the rear property line where 20' is required for fences over 6' in height. Said property is shown on Assessor Plan 161, Lot 42 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

Project Engineer Patrick McLaughlin was present on behalf of the applicant and introduced Bob Richard of Nouria Energy. Mr. McLaughlin reviewed the petition, noting that the applicant had not realized that the previous 6-ft fence would trigger a variance request. He said the new fence was a great buffer that the neighbors approved of and met all the criteria.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Hagaman moved to **grant** the variance as requested, and Mr. Parrott seconded.*

Mr. Hagaman noted that the applicant replaced the fence at the request of the neighbors with a tall fence to protect residential uses around a commercial use. He said granting the variance would not be contrary to the public interest, would observe the spirit of the ordinance, and would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He noted that the public's health, safety, and welfare would probably be improved by the replacement of the small, dilapidated fence with a taller, nice vinyl fence that would improve the neighbors' privacy and ensure that commercial-related traffic or pedestrians stayed off the residential property. He said granting the variance would do substantial justice because there was no gain to the public that would outweigh any loss to the applicant if the petition were denied. He thought the installation of the fence would be a gain to the public. He noted that it was a variance request after the fact that was caused by benign oversight and was not a malicious way to circumvent the Board's requirements or the ordinance. He said values of surrounding properties would not be diminished because the improvement on the property would protect the properties around it and would sustain their existing value. He said the special conditions were that it was a commercial use surrounded by residential, so there was no fair and substantial relationship between the general public purpose of the ordinance and its application to the property. He said it was a reasonable use of one's own property and that the neighbors agreed by requesting the fence.

Mr. Parrott concurred and had nothing to add.

Chairman Rheume said he would support the motion. He said it was a worthwhile variance request and that the Ordinance didn't want people creating their own walled-off compounds or creating a blank canvas around their properties. He said the taller fence was very appropriate in the applicant's case because it was a nonconforming commercial use up against a very residential neighborhood.

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

III. OTHER BUSINESS

There was no other business discussed.

IV. ADJOURNMENT

*It was moved, seconded, and unanimously passed to **adjourn** the meeting at 10:45 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary