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. **October 22, 2019,**
Reconvened From
October 15, 2019

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson; John Formella, Peter McDonell, Arthur Parrott**,** Jim Lee, Alternate Phyllis Eldridge

MEMBERS EXCUSED: Christopher Mulligan, Alternate Chase Hagaman

ALSO PRESENT: Peter Stith, Planning Department

Alternate Phyllis Eldridge assumed a voting seat for all petitions.

I. NEW BUSINESS - PUBLIC HEARINGS

1) Case 10-1. Petition of Daniel L. Hale Revolving Trust, D.L. & C.J. Hale, Trustees for property located at **356-358 Islington Street** wherein relief was required from the Zoning Ordinance to install two AC condenser units that requires the following Variance from Section 10.515.14 to allow a 3' right side yard where 10' is required. Said property is shown on Assessor Plan 145, Lot 16 and lies within the Character District 4-Limited (CD4-L2).

SPEAKING IN FAVOR OF THE PETITION

The applicant Daniel Hale was present and reviewed his petition and the criteria. He noted that his abutting neighbor was in favor of the two AC condenser units.

In response to Chairman Rheaume's questions, Mr. Hale said he had already installed one condenser and then discovered that he needed a permit. He said the air conditioner was installed in the office unit and not any of the three rental units. He explained that there was a staircase under the deck, so the only appropriate place for the condensers was near the other utilities in the utility corridor. He said his neighbor would allow access to his property to do maintenance.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. McDonell stated that the purpose was to add two condensers to two units in the building. He said that granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said he saw no conflict with the purposes of the ordinance for the setback requirements, nor a change in the essential character of the neighborhood, nor a threat to the public's health, safety, and welfare. He said granting the variance would do substantial justice because it was clear that the benefit to the applicant would outweigh any harm to the public or other individuals. He also noted that the immediate neighbor who was most affected was in support of the project. He said he had no reason to believe that the value of surrounding property values would be diminished, and he also referred to the neighbor's letter of support for the project. He said literal enforcement of the ordinance would result in unnecessary hardship because there were special conditions of the property that distinguished it from others. He said the applicant explained that the corridor was a utility corridor and a reasonable place to put the condensers. He said there were utilities on the neighboring property on the other side of the fence as well, which were special conditions that distinguished it. He said there was technically some room at the back of the property for the condensers if necessary, but he thought that the special conditions weighed enough in favor to distinguish it from other properties, and because of those conditions, there was no real relationship between the purpose of the ordinance and its application to the property. He said the proposed use was a reasonable one and that the variance should be granted.

Mr. Lee concurred and had nothing to add.

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

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2) Case 10-2. Petition of William S. and Janice S. Beynon for property located at **5 Osprey Drive** wherein relief was required from the Zoning Ordinance to add a second driveway on a lot that requires the following Variance from Section 10.1114.31 to allow a driveway which does not meet the standards for "General Access and Driveway Design." Said property is shown on Assessor Plan 217, Lot 2-1821 and lies within the General Residence B District.

SPEAKING IN FAVOR OF THE PETITION

The applicant William Beynon was present to speak to the application. He reviewed the petition and noted several hardships that he felt necessitated a second driveway. He said his contractor had already dug the foundation and installed a retaining wall and had told him that a permit

wasn't needed. He said his neighbors approved the project and thought it improved the esthetics. He did not address the criteria.

Mr. McDonell asked whether the gate at the end of the driveway went to the back of the house and whether the house was a single-family one. Mr. Beynon stated it was and said there was a walkway to the house as well. Mr. Lee noted that there were two no-parking signs in the street directly in front of the applicant's house and asked whether people were parking there. Mr. Beynon said no one parked there. Mr. McDonell noted that the applicant said it was 35 feet from the garage to the street but that the ordinance called for 38 feet to allow for tandem parking. He also said the sketch in the package showed 41 feet. Mr. Beynon said it was a mistake and that he was confident the new driveway met the specifications of the ordinance.

Chairman Rheaume said that the applicant's description of the original driveway made it sound dangerous, and he asked whether the applicant had considered abandoning the original driveway and just using the new driveway. Mr. Beynon said he wanted to keep the original driveway for one car's use and use the new driveway for the other car. Chairman Rheaume asked whether Mr. Beynon had thought of ripping up the second parking spot parallel to the house and making it a grassy lot, and Mr. Beynon said he had. Ms. Eldridge asked whether the applicant had considered backing into his driveway. Mr. Beynon explained why it would be more of a problem. Vice-Chair Johnson said it seemed that the utility pole by the second driveway would block a lot of vision and make it as problematic as the original driveway. Mr. Beynon said it was a greater distance from the hill. Mr. Parrott asked whether the property was surveyed before or after the project and whether the new driveway was fully on the applicant's property. Mr. Beynon explained that there was a fence on the property line, then a 2-ft grass area, then the driveway, and that he and his neighbor had no concerns as to where the property line was.

Chairman Rheaume opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

A direct abutter Angela Lambert Belanger of 3 Osprey Drive submitted several photographs to the Board that showed the layout of 3 and 5 Osprey Drive. She noted that the esthetic problems with the driveway were caused by the yard being used as a driveway in the spring, which tore it up, and that adding a new driveway would not fix the esthetics. She said the new driveway would not improve her property value and thought a lawn would be better. She said there was also a safety concern due to vantage points when she backed out of her driveway and that eliminating one driveway would eliminate that concern. She noted that the driveway was only a few inches from the fence and would cause snow removal and snowplow issues, and that the retaining wall on the hill would push the snow in her yard and cause runoff. She said the applicant's two driveways would change the single-family character of the house and make it look more like a two-family home. She said she wasn't aware of a property line survey or a Dig Safe inspection. She suggested that the applicant could have a parking area on the side of the garage that would allow more room for cars to maneuver, and that he could also reduce the driveway's width by 50 percent to create space between the driveway and her fence.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Lee said he had made two site visits to the property, including one that afternoon, and thought it was more of a hazard coming out of the second driveway due to the layout of Osprey Drive. He explained how a slight uphill grade blocked the view of oncoming motorists coming down Osprey Drive and that the new driveway would create more of a hazard than the existing driveway. Ms. Eldridge said she had trouble imagining a hardship on the property, and if there was one, she thought there might be other solutions instead of making a huge new driveway that was right on the neighbor's property and would allow six vehicles to park there. She thought it was an excessive request. Mr. Formella said he sympathized with the applicant because it was possible that he may not have been done any favors by his contractor if he was told that the permits were taken care of, but he thought the application failed the diminution in property values criterion because the abutter convinced him that the driveway had a negative impact on her property. He said he could envision the snow and runoff issues.

Chairman Rheaume said he also found the application wanting in terms of the criteria. He said he didn't want to be the bad person who said the driveway as built wasn't any good, but he felt that it wasn't the Board's concern because it would make it too easy for people to do whatever they wanted and then beg forgiveness afterward. He said the Board owed the responsibility to the City and neighborhoods to enforce the regulations regardless of economic impacts. He noted that the applicant argued that the existing driveway was difficult and dangerous to use, but he thought that would warrant a substitute driveway and not a second driveway. He said the abutter proposed a good solution that might solve that issue by continuing to use the existing driveway but adding some paving area to the right of the garage so that the applicant could pull in frontward, pull into the side area toward the main entry door, and then back into that area. He said the other criterion that the application failed on was making a negative impact on the essential character of the neighborhood. He said a sufficient argument had not been made that other homes in the neighborhood would also have that characteristic or would somehow have some other characteristic that made it look that the applicant's two driveways would not stick out. He said the two driveways would look very unusual to people driving by the property. He said it was one of the criteria that the Board had to use to determine whether or not something was satisfactory. Chairman Rheaume concluded that the application failed on at least two criteria and perhaps the criterion of negatively affecting nearby property values as well.

Mr. McDonell said he felt there was an argument for a hardship because, although he didn't agree with the runoff argument, he thought the applicant's argument that the driveway was too short to have enough space to park two cars head in, one in front of the garage and one to the right of the garage, and then back into the space that was perpendicular and pull head out of the driveway, was the safety concern articulated of being unable to safely back out of that driveway. He said he could see the hardship concern there, but he agreed that the character of the

neighborhood could be changed if another driveway was installed and could cause a diminution of property value to at least the abutting property. He said the Board wouldn't jump through hoops to argue how to approve the petition if the new driveway wasn't already laid out, so he thought there was a hardship but that the application did not meet the other criteria.

DECISION OF THE BOARD

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

Mr. Lee noted that the Board had a lot of discussion and that the application failed on a few points, including that it was contrary to the public interest and that it conflicted with the purposes of the ordinance and would alter the essential character of the neighborhood, especially when someone drove by the house and saw two driveways. He said the natural conclusion would be that the house was a two-family one in a single-family neighborhood, which was not allowed, and that the benefit to the applicant would be outweighed by the harm to the general public by the appearance of a two-family house that could diminish property values and esthetics. For those reasons, he said the application should be denied.

Mr. Parrott said he had wanted to vote in favor, but the more he thought about the criteria, he had to agree that it was clear that two driveways on one property would be out of character with the neighborhood. He said it would be a major change, one that would be a detriment to the abutter. He also noted that it was hard to see that the additional driveway wouldn't have some negative effect on the value of the adjacent property, especially because it was a fairly large driveway that could hold several vehicles. He said the application failed those two criteria and that he couldn't support it. Vice-Chair Johnson said he would support the motion because he agreed that there was a hardship but the abutter made a lot of good points. He said he thought the current driveway could be altered to reduce some of the diminution of value concerns, especially related to snow, and said it failed on the first two criteria.

Chairman Rheaume said the Board's viewpoint, especially relating to hardship criteria, was whether there was something unique to the property that would indicate that anyone else in the neighborhood who wanted to do the same thing if they thought they had the same special conditions couldn't do so. He said he didn't see that the applicant's property had something that unique to it and thought the issues with the short driveway could be solved.

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

Vice-Chair Johnson recused himself from the following petition.

3) Case 10-3. Petition of LCSG LLC for property located at **160 & 168-170 Union Street** wherein relief was required from the Zoning Ordinance to merge two lots into one and with four dwelling units in three buildings that requires the following Variance(s): a) from Section 10.521 to allow a lot area per dwelling unit of 2,336 s.f. where 3,500 s.f. is required; b) from Section

10.521 to allow 36% building coverage where 35% is the maximum allowed; c) from Section 10.521 to allow a 5'6" left side yard where 10' is required; and d) from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Plan 135, Lots 29 and 30 and lies within the General Residence C District.

SPEAKING IN FAVOR OF THE PETITION

The applicant Tasha Goyette was present to speak to the petition. She reviewed the petition, noting that the GIS map was larger than what the survey assessed, resulting in each dwelling unit being less than what was previously approved. She said they wanted to keep the duplex as it was, which made the project smaller in scale. She reviewed the hardship criteria and special conditions of the property. She also said she had several letters of support from her neighbors.

Chairman Rheaume said the existing duplex was the focus of a lot of changes and that the applicant originally intended to keep it as a duplex. Ms. Goyette agreed. In response to further questions from Chairman Rheaume, Ms. Goyette said they had received no negative feedback from the neighbors regarding putting one of the parking spaces in the back end of the property. She said the duplex would stay as it was, a door in the front and a door in the back. She agreed that the new item was the nonconforming back steps that would be kept nonconforming because the entry door couldn't be moved over enough to eliminate the nonconformance.

Chairman Rheaume opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

Janet Morley of 188 Union Street read from a letter by her husband Roland Cote that stated that it was the third anniversary of the first request for ten units, which should raise a red flag. She read that he maintained that there was a nonconforming structure that the applicant said they would do something with but kept their plan a secret after they made it more nonconforming by a supposedly 'blank check' provision on the Board's part. Ms. Morley said the area was too dense as it was and thought the property had never met the hardship criteria. She said that the project would spoil the unique character of the neighborhood by eating up a lot of the open space and causing more noise and pollution. She said firetrucks would have a hard time accessing the rea due to the narrow street. She alleged that the applicant had already done several things without getting a permit and that she didn't have integrity. She referenced previous comments by the Board on other similar projects that they were reluctant to approve.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Goyette said she had created relationships with everyone who was willing to have discussions with her and would continue to work with them. She said she had lots of integrity and would never mislead anyone.

Janet Morley said integrity was important and that there wasn't much of it when doing work on a property without permits. She also said there were hard feelings among the neighbors.

Mary Brake of McHenry Architecture said she'd been working on the project. She said the single-family unit was scheduled to have basement access, so it didn't need a bulkhead, and the property had more on-site parking that would relieve street parking. She said the biggest change was leaving the duplex as it was, and that they had improved the garage to meet the neighbors' needs. Chairman Rheaume asked if anything could be done to eliminate the one percent over the total building coverage. Ms. Brake said they had designed the single-family unit in the same footprint and that the space was already very tight. Chairman Rheaume asked if the steps on the back of the duplex could be moved out of the setback requirement by relocating the doors. Ms. Brake said the steps were rebuilt and the layout of the duplex, with its kitchen, bathroom, and dividing wall, would make it difficult to move the door. Mr. Parrott asked if the property line had been surveyed. Ms. Brake said the survey was done, which was how they discovered that the lot was smaller than the City said it was. She said the property lines were marked.

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

DISCUSSION OF THE BOARD

Ms. Eldridge said it seemed like the Board had made all the hard decisions on the property a few times already and found that the project met their criteria. She said the difference of one percent and the small increase in lot area per dwelling unit seemed insignificant to her, and she noted that the Board had often approved variances with a 6-inch or one-foot difference. She said the applicant couldn't have predicted that she would lose 106 square feet and that the applicant wasn't asking for anything that the Board hadn't already approved. Mr. Lee agreed, noting that the applicant had been before the Board a few times and the relief requested was slight. He said the application had the blessing of the whole neighborhood, with a few exceptions, and he recommended that the petition be approved. Mr. McDonell agreed, noting that the new request was for building coverage and was a tiny increase above what was allowed, and the only substantive change was to keep the exit stairs in the existing duplex, and they were father away from the setback than the existing duplex that was approved. He said that Section 10.321 did not write a blank check to allow people to do what they wanted to a nonconforming building but instead was something that had to be approved any time there was a nonconforming building or structure that needed a variance. He said if the Board approved the project, it would not give the applicant the ability to change it because the Board would approve it as presented. He thought the Board should approve it, noting that it was still a big project with a small amount of necessary relief, like when the Board approved it before.

DECISION OF THE BOARD

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

Mr. Formella said the property and project had a complicated history but that the Board was asked to approve some very slight relief on top of what was already approved, based on a survey that resulted in an unexpected reduction in square feet. He said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because there was only a slight increase in relief in lot area per dwelling unit and now there was some slight building coverage relief of one percent. He said the relief from the left yard setback was still getting more nonconforming but would not alter the essential character of the neighborhood and that there was nothing about the additional relief that would threaten the public's health, safety, or welfare. He said substantial justice would be done because if the Board didn't approve the slightly additional relief, it would be a uniquely large loss to the applicant, given the work they had put into the project and all the work they did to get the approvals so far, and he couldn't see a gain to the public if the variances were denied. He said granting the variances would not diminish the value of surrounding properties, noting that he could see nothing to indicate that the additional relief would do so. He said it was a uniquely compelling case for the hardship because the special conditions of the property included the relief already granted, and the additional relief asked for compared to the relief already granted was so small that there was really no fair and substantive relationship between the purposes of the ordinance and their application to the property. He said the proposed uses were reasonable and they were approved uses, and for those reasons the Board should approve the application.

Mr. Parrott concurred, adding that the issue before the Board was very narrow and small and in no way reflected what was previously debated before the Board. He said it was only reasonable that the request for the variances be approved.

Chairman Rheaume said he would support the motion. He noted that the duration of the project was brought up and felt that no one wanted to get further along with it than the applicant. He said construction in Portsmouth could be difficult and time-consuming, with lots of details and issues, and was the reason developers usually did that type of project. He said that, in terms of the survey being done, the Board had been working through small changes and how they could provide some type of tolerance on what they approved. He said there were one and two percent change differences and that the applicant went from what was fully compliant to something one percent over because the applicant didn't think it would make a fundamental difference to the Board, seeing that they originally approved the project. He said the Board had a concept in mind originally that consisted of three buildings, the number of units, and the general size and position of the buildings, and that it hadn't realistically changed. He said that, going forward, the Board should recommend a survey for most projects, especially for a project of that magnitude. He also noted that the main issue was the stairs because it was an existing situation and not new construction, so there were hardship aspects for that.

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

Vice-Chair Johnson resumed his voting seat.

4) Case 10-4. Petition of Heritage NH LLC c/o Baker Properties LLC, owner, Andrew Richard, applicant, for property located at **2800 Lafayette Road** wherein relief was required from the Zoning Ordinance for a change of use to a health club that requires the following Special Exception from Section 10.440, Use #4.40 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is shown on Assessor Plan 285, Lot 2 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

SPEAKING IN FAVOR OF THE PETITION

The applicant Andrew Richard was present and reviewed the petition, noting that it was a change in use from a pizza restaurant to a health club. He reviewed the health club's franchise model and the Special Exception criteria.

Mr. Parrott asked whether there would be food service in the facility and how many people would be in the facility at the busiest time. Mr. Richard said food would not be prepared but that members might be able to order food from other places ahead of time and bring it to the facility. He said the business model consisted of three pod spaces and that up to 24 people could be in one space at a time if maximum membership was reached, but that it was likely that 18-20 customers would be present at the busiest times, with an additional two staff members, and would not go over 30 people. In response to questions from Chairman Rheaume, Mr. Richard said that most customers would be in the facility early in the morning, at noon, and after work, and if there were no classes, there would only be a few employees. He said the 8-ft symbol in the drawing indicated handicap access but noted that an adjustment was made to that plan to move the bathrooms. He submitted the updated layout to the Board.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **grant** the special exception for the application as presented, and Mr. Lee seconded.*

Vice-Chair Johnson said it was a reasonable use in a good location. He said the plaza appeared to be underutilized at times, possibly because Papa Gino's had not been doing that well, and that there were a lot of similarities but very different uses. He said a restaurant would have an influx of people at particular times, and a similar level of utility and bathroom use and so on, and that the proposed use would be less intense than what had existed there for a long time. He said that the standards as provided by the ordinance permitted that particular use by special exception and that granting it would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic chemicals. He said that, due to the nature of the use, he would argue that it would be less than what used to be there. He pointed out that there would be a bunch of people working out with minimal equipment and instructor-led, and that there would be

times when classes didn't occur and the space was vacant or would just have a few staff members. He said that granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics of any area, including residential neighborhoods, businesses, and industrial districts on account of the location or scale of buildings or other structures, parking areas, accessways, odors, smoke, gas, dust or other pollutants, noise, glare, and so on. He said a lot of those things were not necessarily relevant and that he didn't see much of an issue with the few that were with that type of use. He said granting the special exception would pose no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. He noted that there would be an influx of vehicles in and out of the property probably 3-5 times a day, but no more than there had been in the past, and arguably less, especially at lunch and dinner times. He said the plaza could handle that type of traffic. Granting the special exception would pose no excessive demand on municipal services and so on because it seemed to be not much of an issue, due to a minimal number of bathrooms, not much utility use and lack of a kitchen, and would probably be a reduction in many utility uses. He said there would be no significant increase of stormwater runoff onto adjacent properties or streets since the existing building would remain as is, including the parking lot. For those reasons, Vice-Chair Johnson said the Board should approve the application.

Mr. Lee concurred and had nothing to add.

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

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5) Case 10-5. Petition of Weeks Realty Trust, Kaley E. Weeks, Trustee, and Chad Carter, owners, Tuck Realty Corporation, applicant for property located at **3110 Lafayette Road and 65 Ocean Road** wherein relief was required from the Zoning Ordinance for construction of 18 Townhouses in 5 structures with 1 existing home to remain on conforming lot which requires a Variance from Section 10.521 to allow a lot area per dwelling unit of 4,459 s.f. where 15,000 is required. Said property is shown on Assessor Plan 292, Lots 151-1, 151-2 and 153 and lies within the Single Residence B District.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant to speak to the petition. He introduced the project engineer Mike Garrity. Attorney Phoenix reviewed the petition, noting that the actual square footage of the lot was less than the previous square footage used to get the Board's approval, which reduced the lot area per dwelling unit by a difference of 78 square feet per unit. He said there were no changes on what was being built or its location. He said the lot was just 1,400 square feet less due to a more recent survey. He read from the previous Notice of Decision of July 2019 and reviewed the criteria.

Chairman Rheaume said that the single-family lot depicted in the package looked like it was made the smallest as possible without requiring a variance for it, and Attorney Phoenix stated that it was. Chairman Rheaume said the other alternative was to request a variance for the

amount of square footage for that lot. Attorney Phoenix agreed and said it wouldn't change anything holistically.

Chairman Rheaume opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

Robert Mayberry of 35 Winchester Street said the project was against the neighborhood's character because it was the equivalent of two homes in the area by jamming six townhouses onto two properties. He said it would also cause at least six if not twelve new vehicles to be in an area of where only one home should be and could also cause snowplow issues.

Maria Gregory of 85 Ocean Road said it wasn't right to put so many houses where there should only be one resident, which would not benefit the neighborhood. She said the contractor might find some ledge when the foundation was dug that could disturb the groundwater and cause flooding. She also thought there would be more vehicles and traffic.

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. McDonell moved to **grant** the variance for the application as presented, and Ms. Eldridge seconded.*

Mr. McDonell said it made sense to look at what the Board previously approved, the concept, and what they were being requested to approve in this case. He said the concept was several structures that included several homes and an additional dwelling on the lot. And that there was no change except for the calculation of the total square footage of the lots. He said it wasn't enough of a decrease in the lot area per dwelling unit that it would change the calculus that the Board previously made. He said it made more sense to incorporate the Board's earlier discussion when they approved the petition the previous time. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said that, in decreasing the lot area per dwelling unit in a minor way, he saw no conflict with the purposes of the ordinance, no alteration in the essential character of the neighborhood, and no threat to the public's health, safety, and welfare from what had been approved and what was being proposed. He said substantial justice would be done because the additional point to consider was that the whole thing had been approved. He said it was approved with some inaccurate information, but they were minor inaccuracies, and he saw no harm to the general public or other individuals that would outweigh the benefit to the applicant. He said granting the variance would not diminish the values of surrounding properties, noting that he saw no evidence of such from a very small decrease in lot area per dwelling unit. He said the Board had discussed the special conditions of the property in the past and that he thought it was reasonable for the applicant's engineer to rely

on the prior plans. He said the special conditions of the property did distinguish it from others in the area because it was sort of a transition zone and he didn't think there was any real relationship between the purposes of the ordinance and their application to the property. He said the proposed use was a reasonable one.

Ms. Eldridge concurred with Mr. McDonell and had nothing to add.

Chairman Rheaume said he would support the motion. He said he understood the abutters' concerns but noted that they were expressed the previous time and that the Board took them into consideration at that time and determined that they felt the request was reasonable and met the criteria. He said what was being asked for was a small change that didn't affect the fundamental characteristics. He said he also understood the concerns about the units being positioned where they were on the property line, but that the applicant wasn't asking to move anything relative to anything else and that there was no fundamental change there as well. He said that the actual size of the property was simply slightly different from what the applicant originally thought, noting that the applicant had used previously available survey data. He said there was nothing substantial enough for the Board to revisit what was previously approved by them.

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

II. OTHER BUSINESS

BOA Rules and Regulations

Mr. Stith reviewed two changes to the Rules and Regulations:

- Regarding the rule of when an applicant can withdraw an application (page 6), he said the Board edited the language to read as follows: 'On the date an application is to be heard by the Board, it may only be withdrawn by the applicant or the applicant's representative after the case has been read into the record but prior to the board opening the public hearing on the application'.

- Mr. Stith said the Legal Department was still looking into the comment on page 7 and thought it could probably be deleted, but there was one case in particular that they wanted to look into. He said the results should be in before the November meeting. He also noted that, relating to the term 'presentation by the applicant or the applicant's representative explaining the application and the reasons why the Board's approval should be granted', he had added the phrase 'based on the applicable criteria', noting that it could be for a special exception or a variance and that it reiterated that the Board needed to address the criteria that was relevant to the application.

Mr. Stith said the other changes from the previous week had not been revised.

Mr. McDonell suggested that the first change be amended to read that 'DURING the meeting that an application is being heard, the applicant could withdraw' instead of 'on the date'.

Ms. Eldridge asked whether an applicant would have to wait for the entire meeting to say he or she wanted to withdraw his application. Chairman Rheaume said the applicant could speak with him before the meeting and that the Board could certainly take it out.

Mr. Stith said he would make the changes.

III. ADJOURNMENT

*It was moved, seconded, and unanimously passed to **adjourn** the meeting at 9:00 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary