

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

7:00 P.M.

NOVEMBER 19, 2019

MEMBERS PRESENT: Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge

MEMBERS EXCUSED: Chairman David Rheame, John Formella, Alternate Chase Hagaman

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheame was absent, and Vice-Chair Johnson assumed his seat as Acting Chair. Alternate Eldridge assumed a voting seat for every petition.

I. APPROVAL OF MINUTES

A) October 15, 2019

*It was moved, seconded and **passed** by unanimous vote to approve the Minutes as amended.*

B) October 22, 2019

*It was moved, seconded and **passed** by unanimous vote to approve the Minutes as presented.*

II. OLD BUSINESS – PUBLIC HEARINGS

A. Case 8-11. Petition of Dagny Taggart, LLC for property located at **0 (53) Daniel Street** for a five-story building with mixed commercial uses wherein variances from Section 10.5A41 & Figure 10.5A41.10C are required to allow the following: a) a building footprint up to 17,500 s.f. where 15,000 s.f. is the maximum allowed; and b) a 3' rear yard where 5' is required. Said property is shown on Assessor Plan 107, Lot 27 and lies within Character District 4 and the Downtown Overlay District. (This petition was postponed from the October 15, 2019 meeting.)

*The Board voted to **postpone** the application to the December 17, 2019 meeting.*

Minutes Approved 12-17-19

The Board voted to take Petition 11-6, 492 Union Street, out of order. (see Page 8).

III. NEW BUSINESS - PUBLIC HEARINGS

1) Case 11-1. Petition of Pease Rehab LLC c/o Northeast Rehab for property located at **105 Corporate Drive** wherein relief was required from the Zoning Ordinance to construct a 30,910 s.f. addition over two floors that requires a Variance from Part 304.04(e) of the Pease Development Authority's Zoning Ordinance to allow a 10 foot setback where 50 feet is required. Said property is shown on Assessor Plan 303, Lot 7 and lies within the Airport Business Commercial District.

SPEAKING IN FAVOR OF THE PETITION

Attorney Ari Pollack was present on behalf of the applicant and introduced the project team. He reviewed the petition, noting that Wentworth Douglass Hospital agreed to a lot line adjustment but that a lesser setback was necessary due to the type of soil that required special handling. He reviewed the Pease Development Authority's (PDA) criteria and said they would be met.

In response to the Board's questions, Attorney Pollack said the covenant would last 75 years and would not attenuate. He noted that the applicant and Wentworth Douglass were separate entities.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **recommend approval** of the variances to the PDA, and Mr. McDonell seconded.*

Mr. Mulligan stated that the application met all the criteria from the PDA's ordinance to recommend approval. He said it would not be contrary to the public interest and there would be no adverse effect from diminution of value of surrounding properties, noting that the reason for the relief was to avoid disturbance and activity within the contaminated area. He said denial of the variances would result in unnecessary hardship to the party seeking it because the applicant was seeking setback relief to avoid having to acquire an interest in a contaminated parcel. He said substantial justice would be done for the same reasons due to the desire not to change the contaminated portion of the properties. He said the proposed use would not be contrary to the spirit of the zoning rule because the setback relief requested, plus the deed restriction agreed to by both parties, were equivalent to the required setback so the proposal was not contrary to the

zoning rule for the setback. He said the applicant met all the criteria necessary under PDA's zoning ordinance for a variance and thought the Board should recommend approval.

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

It was moved, seconded, and passed unanimously (6-0) to recommend approval of the variances to the Pease Development Authority.

2) Case 11-2. Petition of MDM Rodgers Family Limited Partnership, owner, Charles Caldwell, applicant for property located at **53 Tanner Street** wherein relief was required from the Zoning Ordinance to convert an existing dwelling into a two-family which requires the following Variances: a) from Section 10.5A41.10A to allow a lot area per dwelling unit of 1,089 square feet where 3,000 per dwelling unit is required; b) from Section 10.5A41.10A to allow a 3' left side yard where 5 feet is required; and c) 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 126, Lot 46 and lies within the Character District 4-Limited (CD4-L1).

SPEAKING IN FAVOR OF THE PETITION

The owner Jodie Rodgers and applicant Charles Caldwell were present to speak to the petition. Ms. Rodgers said she wanted to convert the single-family home into a two-family one and change the roof to a dormered one. She reviewed the criteria and said they would be met.

In response to the Board's questions, Ms. Rodgers said they wanted to convert the home to a multi-family one because two units would be more desirable. Mr. Caldwell said the new stairway would improve the egress to all the floors, the footprint would not be expanded, and the project would add 400 square feet. Ms. Rodgers said the third floor was finished and heated and that the house was laid out in its original configuration. She said the bottom unit would be a rental. Acting-Chair Johnson noted that the dormer was close to the property line and abutting property and also had several windows. Ms. Rodgers said the neighbor had a shed building close by.

Acting-Chair Johnson opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

Martin Burns of 288 Hanover Street said he lived behind the property and had a shed about 17 inches from the building's foundation and was concerned about the mass, the water runoff, the heating system location, the narrow parking, and foundation digging that would ruin his shed. He said a better system was needed to get rid of water runoff, especially with the added dormers.

Rebecca Conway of 37 Tanner Street said she was opposed the project because it would impact the neighborhood’s character of mostly single-family homes, tight quarters, and a parking shortage. She said the driveway was extremely narrow and barely accommodated two cars.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Stith noted that three parking spaces were required for two units. Acting-Chair Johnson said the applicant was allowed tandem parking. Mr. Mulligan said the setback relief was driven by the existing setback, so it was a vertical expansion, which he felt wasn’t a large request. He said the lot area per dwelling seems like a lot of relief but wasn’t unusual in the neighborhood, and the applicant was entitled to convert to two units by right since there weren’t proposed exterior changes. Mr. Stith said the added dormer would be an exterior change. Mr. Mulligan said the dormers were justified and that the parking requirement was met, so he could support the project.

Mr. McDonell said denying the application would mean that the applicant would have to keep the third floor unusable or make it substantially less usable than proposed and not add the 400 square feet. He agreed that the applicant could by right turn it into a two-unit dwelling by not making exterior changes, resulting in the apartments being small instead of one large one and one small one and changing the impact it would have on the neighborhood. He said that portion of the street felt like its own separate neighborhood, with small but usable family homes. He said there may be a change to that allowed by right, but that granting something like that would be an even bigger change and would not meet all the criteria. He agreed with Mr. Mulligan’s comments about the left side yard and the vertical expansion, but he was concerned with the lot area per dwelling. Acting-Chair Johnson said pre-1980 buildings were allowed to be converted if there was no exterior change, which already drove a certain unit size. Mr. Lee questioned fitting three parking spaces in the driveway. Ms. Eldridge said it was an attractive conversion and wouldn’t look like a two-family home but she had trouble seeing the hardship. Acting-Chair Johnson agreed that it was a tight neighborhood but thought it was a good area and a positive way to add residential stock. He thought the relief request for the dormers was minimal but that dormers were typically allowed along the side façade of a building. Mr. Stith said that no property line survey was done.

DECISION OF THE BOARD

*Mr. Lee moved to **deny** the variances for the application as presented, and Mr. McDonell seconded.*

Mr. Lee said the project was contrary to the public interest and the spirit of the ordinance because of the area’s extreme snugness and that he didn’t see any hardship. Mr. McDonell concurred. He said he also didn’t think there were special conditions that distinguished the

property from others in the neighborhood that constituted a hardship. He said the single-family home was perfectly serviceable in a small neighborhood of similar single-family homes. He said there was also a concern about whether it would diminish surrounding property values, and he thought the substantial addition and third-floor expansion would increase the intensity of the use. He agreed that the parking looked tighter in person than on the application but thought that even if there were three parking spaces, there would be a substantial increase in the intensity of use that would diminish the value of surrounding properties. He concluded that there were no special conditions indicating hardship.

Acting-Chair Johnson said the application checked a lot of the boxes but he would vote in favor of the motion to deny because he didn't feel that a valid hardship argument was made.

The motion passed by a vote of 5-1, with Mr. Mulligan voting in opposition to the motion.

3) Case 11-3. Petition of Mark & Linda Mattson Trust Agreement, Jeffrey M. & Tyler E. Mattson, Trustees for property located at **51 Cottage Street** wherein relief was required from the Zoning Ordinance to keep up to ten (10) hens that requires a Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals. Said property is shown on Assessor Plan 174, Lot 18 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

The applicant Mark Mattson was present to speak to the petition. He said the property was fenced in and that he had always considered his chickens pets instead of farm animals for the past 15 years that he had them. He read a letter of support from the immediate abutter into the record. Mr. Stith said there the Board received another abutter's letter of approval for the project.

In response to Mr. Mulligan's questions, the applicant said there was a wooded stretch that contained an apartment complex about 50 feet from his rear property line, with some vegetation buffer between the two properties. Acting-Chair Johnson said only six hens were permitted.

Acting-Chair Johnson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Paul McEachern said his son, who was the immediate abutter, emailed a letter to the Board stating that he was in favor of the project.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variance for the application as presented, with two stipulations:*

- 1. The hens shall be limited to six, and*
- 2. Roosters shall be prohibited.*

Mr. Mulligan said granting the variance would not be contrary to the public's interest nor the spirit of the ordinance, even with six farm animals in the configuration, because the essential residential nature of the surrounding neighborhood would not be altered and the public's health, safety, and welfare would not be impacted. He said substantial justice would be done because the loss to the applicant if strict conformance to the ordinance were required would not outweigh any gain to the public. He said the public appeared to be in favor of the application and that it had been an ongoing condition that hadn't caused any negative effects. He said granting the variance would not diminish the values of surrounding properties because it appeared that the closest abutters were well screened from the animals. He said literal enforcement of the ordinance would result in unnecessary hardship to the applicant, noting that the wooded lot was a decent-sized one and had a vegetated buffer between the rear neighbor's large lot, so there were special conditions that distinguished the property from others in the area such that there was no fair and substantial relationship between the purpose of the ordinance and its application to the property. He said it wasn't like the animals would get out and pester the neighbors because there was plenty of land to keep a modest number of chickens. He said the use was a reasonable one that had existed on the property for 15 years without incident and that the application met all the criteria and should be granted, with the two stipulations.

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

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

4) Case 11-4. Petition of Christine W. Culver for property located at **57 Porpoise Way** wherein relief was required from the Zoning Ordinance to construct a two-story addition within the existing footprint which requires the following Variances: from Section 10.521 to allow a 12.5 foot rear yard where 25 feet is required; and from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the Ordinance. Said property is shown on Assessor Plan 212, Lot 62 and lies within the General Residence B District.

SPEAKING IN FAVOR OF THE PETITION

The applicant Christine Culver was present to review the petition. She said the addition would be two stories and would have a shed roof. She read her submitted letter to the Board stating the reasons for the addition, the main one being that she could afford to retire without leaving her home. She noted that there were three emails from abutters in support of the project.

Mr. Mulligan asked whether the existing addition's footprint would be expanded. Ms. Culver said it would not and that the rear dormer would remain the same.

Acting-Chair Johnson opened the public hearing.

Kevin Sullivan of 60 Porpoise Way said he was an abutter and in favor of the proposal.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Parrott said the project would be a nice upgrade to the house that would reflect well on adjacent properties and be a win-win for everyone. He said there would be no expansion toward the neighbors. He said granting the variances would observe the spirit of the ordinance by not altering the essential character of the neighborhood nor threatening the public's health, safety, or welfare. He said it was hard to see any public rights involved by the addition in the back of the house. He said substantial justice would be done and there would be no diminution of surrounding property values because the project was a profound element of advantage to the owner and had no contradicting interests from the public. As far as hardship, he said there was no aspect of the project that would harm anyone in the public because the property was small and there was no other logical place to put the addition. He said the existing structure was in poor condition and would benefit from being torn down and replaced and that it was currently a hardship. He said the proposal met all the criteria and that should be approved.

Mr. McDonell concurred with Mr. Parrott, adding that the rear lot line's angle required the rear yard setback relief, which distinguished it from others in the area. He said he was amazed that the applicant needed only one point of relief to do anything on a lot that small.

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

5) Case 11-5. Petition of D'Angelo Inc. for property located at **1981 Woodbury Avenue** wherein relief was required from the Zoning Ordinance to install a 30" x 180" wall sign that requires a Variance from Section 10.1271 to allow a sign where there is no frontage or public entrance. Said property is shown on Assessor Plan 215, Lot 7 and lies within the Gateway Neighborhood Mixed Use Corridor District (G1).

SPEAKING IN FAVOR OF THE PETITION

The sign representative Michael Privatera was present on behalf of the applicant. He said the sign was necessary for visibility and noted that the previous tenant had side and front signs. In response to Mr. McDonell's question, Mr. Privatera said that people passed the store before seeing the existing sign due to the quick-moving traffic.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Ms. Eldridge said she thought the sign would be an important part of the building and very visible façade, despite the fact that it wouldn't be near a public entrance or face the street. She said people wouldn't see the current sign from the front if they couldn't see it from the side. She said granting the variance would not be contrary to the public interest or to the spirit of the ordinance because advertising was allowed and the sign would be placed in an important location. She said substantial justice would be done because the sign would not diminish the value of surrounding properties. She said the special condition of the hardship was the building's placement that had a big façade facing the parking lot.

Mr. Lee concurred with Ms. Eldridge, noting that the building was in a commercial area and that increasing the visibility of the business would be an asset to the owners.

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

6) Case 11-6. Petition of Stanley E. & Michelle Brandon for property located at **492 Union Street** wherein relief is required from the Zoning Ordinance to remove two existing sheds and construct a new, 24' x 24' two-car garage which requires the following Variances: a) from Section 10.521 a) to allow 26% building coverage where 25% is the maximum allowed; b) from Section 10.573.20 to allow a 4' left side yard where 10' is required; and c) from Section 10.573.20 to allow a 7' rear yard where an 18'2" rear yard is required for an accessory structure. Said property is shown on Assessor Plan 133, Lot 43 and lies within the General Residence A District.

*The Board voted to **postpone** the petition to the December 17, 2019 meeting.*

Mr. Mulligan recused himself from the following petition.

7) Case 11-7. Petition of 100 Islington Street Condominium Association, owner, 100 Islington Street Development, LLC, applicant, for property located at **100 Islington Street** wherein relief was required from the Zoning Ordinance to demolish existing building and construct a 14,582 square foot building with 24 dwelling units that requires the following Variances from Section 10.5A41.10A: a) to allow a building footprint of 14,582 square feet where 2,500 square feet is the maximum allowed; b) to allow a lot area per dwelling unit of 1,015 square feet where 3,000 square feet per dwelling unit is required; and c) to allow a front lot line buildout of 37% where 60% is the minimum required. Said property is shown on Assessor Plan 137, Lots 25-1 through 25-7 and lies within the Character District 4-Limited (CD4-L2).

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen was present on behalf of the applicant and introduced the petition's principal Ron Zola, the project engineer John Chagnon, and the architect Carla Goodknight. Attorney Bosen reviewed the petition, noting that the lot was large and that the existing building was nonconforming and had noncompliant parking. He said there would be 24 residential units and that all parking would be underground. He reviewed the criteria and said they would be met.

Mr. Lee asked what each unit's price would be. Mr. Zola said the units were 1,100-1,400 square feet each and would be priced around \$450-550 per square foot. Mr. Parrott said the back part of the site close to the back wall dropped off sharply and was very low land relative to adjacent properties and might be wet. He asked what the site inspection had determined. Attorney Bosen said the water would be collected and placed where it belonged. Mr. Parrott asked what the soil analysis was. Mr. Chagnon said there hadn't been a lot of work done yet. He said the building would capture any runoff and divert it to the roof drains, and that there would be some treatment under the driveway. He said it was a balancing act between what could be diverted to the back but believed there would be no impact on the neighbors.

Acting-Chair Johnson opened the public hearing.

Demetrious Yiannicopoulos of 211 Summer Street said that his house and the surrounding houses had a lot of water on their properties during the rainy season and that he had water in his basement year-round, and he wondered how there could be underground parking. He thought the reason why nothing had been done with the greenspace in his backyard for so many years was because it was a natural waterway. He said 24 units were more like a hotel than a residence.

SPEAKING IN OPPOSITION TO THE PETITION

Elizabeth Bratter of 159 McDonough Street said the applicant was asking for relief that would not be consistent with the neighborhood. She said the request was for six times more of a footprint than allowed and three times more per unit.

Eric Doremus of 86 Islington Street said he was one of the six condominium owners and thought the applicant had to show that no significant increase of stormwater runoff would occur as a

result of the project. He said there were several water issues and that there was no greenspace or catch basin to collect the water. He said the flooding would worsen and would decrease property values. He showed the Board photos of area flooding.

Jody Hughes of 609 State Street said she was on the condominium board at the Whipple School. She said they had several drainage issues on the property. She said she was shocked at the proposed number of units and thought the shadow effect would change the quality of living and the light. She asked where visitors would park.

SPEAKING TO, FOR, OR AGAINST THE PETITION

John Chagnon said they built 133 Islington Street, which was a large building massed along the road, and they were able to deal with the stormwater runoff. He said the applicant's lot was unique because it required the buildings to be brought to the front. He said the new design would enliven the street and that the underground parking would be efficient.

Suzanne Soran said she was concerned that the blasting required for the underground parking would negatively impact her old brick building and that she was also concerned about privacy.

Elizabeth Bratter said the shown configuration of the four buildings indicated only eight units instead of 24 and that there was a big difference between 8 and 24.

Attorney Bosen said the building met the City's height ordinance and that the Technical Advisory Committee would address drainage and surface water issues. He said the parking met all the requirements and would be within walking distance of downtown.

Carla Goodknight said there was a 6-ft grade change across the site from front to back and that entry stoops would raise the building 2-3 feet and bring them close to the grade in the back for the parking level. She said there wouldn't be much excavation. She said they would not exceed the 60 percent maximum allowed building coverage nor the height and were only asking that the buildings connect together to cover the parking and unify the infrastructure.

Demetrious Yiannicopoulos said his house was in the low areas and thought a 6-ft hole could be created in his backyard. He said he would be looking at a wall or berm.

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

DISCUSSION OF THE BOARD

Mr. McDonell said he didn't think the proposal was in keeping with the neighborhood's character. He said there were similar large buildings on large lots, including the Whipple School Condos, which looked in keeping with the neighborhood, but that another large building on Islington Street looked similar to what the project would look like and didn't look like it was in keeping with the neighborhood. He referred to the neighborhood's character, values of

surrounding properties, and the shadow effect, and noted that the applicant met the height requirements of the ordinance but that there wasn't an expectation of a 150-ft long building. He was concerned that the structure's size would overpower other parcels in the vicinity and diminish values of surrounding properties. He said there was a hardship in the minimum lot line buildout because it was a big lot, but he didn't see the hardship on the other two variance requests. He noted that the applicant made the argument that they could build something even worse, so building something affordable with more units would be better, but he said he didn't see it and he also didn't see the hardship for the lot area per dwelling footprint.

Ms. Eldridge said she disagreed, noting that a lot of homes on Islington Street looked the same way. She pointed out that the Board wasn't considering the back connecting part. She said the way the project was broken up made it look like individual private homes and was in keeping with what the neighborhood might have looked like at one time, but she thought the infill was a concern. She said the height didn't bother her because it was allowed. Mr. Lee agreed, noting that the front was attractive and in keeping with the neighborhood's character and streetscape, but he had an issue with the project's scale.

Mr. Parrott said he liked the style but his main concern was the total intensity of the large amount of relief asked for, with respect to the total number of units, which he felt was very large and different from all the adjacent properties' units. He said the applicant's project was as big as the Whipple School Condos that only had 11 units compared to 24 units, and he thought the requested relief was very ambitious for the size of the lot in terms of the number of units requested, with respect to the neighbors and the ordinance itself that required 3,000 square feet per unit. He said it could be redesigned in a way that was closer to compliance with the ordinance and that would better fit in with the neighborhood. Acting-Chair Johnson agreed and said the design was tasteful and addressed the streetscape appropriately but thought the density request was too much and that the infill took up a fair portion of the lot. He said that part of the benefit of housing more than one unit on a lot was the shared efficiency of space, which he didn't see in that large development. He said it was an excellent spot for that type of development and that the unit sizes seemed reasonable, but the parking numbers met the parking requirement exactly and he thought that backing into the development was maxing out as much as possible on what was allowed for parking. He said he preferred to see something less intense, something between what was required for the 3,000-s.f. unit and what was proposed at 1,000 square feet. Mr. Lee asked what was going on behind the structure that the Board couldn't see.

DECISION OF THE BOARD

*Mr. McDonell moved to **deny** the variance requests for the application as presented, and Mr. Parrott seconded.*

Mr. McDonell said he thought the requests failed on the public interest. He said he agreed that the façade on Islington Street looked like it was in keeping with the neighborhood but felt that the absolute size of the structure was not in keeping with the neighborhood's character. He said if someone looked at the development at certain angles, they wouldn't notice anything unusual,

but if they walked around that block, they would consider it a massive structure that was not in keeping with the neighborhood. He said the project would be contrary to the public interest and would alter the essential character of the neighborhood. He referred to his previous comments that the size of the structure would cause substantial shadow effects and other things that would be detrimental to the properties immediately around the lot, noting that there wasn't a hardship that would justify the granting of the variances. He said there was a hardship for the lot line buildout but not when it came to the requested footprint or the requested lot area per dwelling unit. He said it was too ambitious for the lot.

Mr. Parrott concurred and said the criterion he had the most problem with was the hardship inherent in the property and that he just didn't see it. He said it was a large property so it wasn't constrained in that regard, but the amount of relief requested was substantial and just too much. He referenced his previous remarks to incorporate them into his motion.

Ms. Eldridge said she would support the motion to deny and agreed that the back of the project, which she would have liked to see, could be troublesome.

The motion passed by unanimous vote, 5-0.

Mr. Mulligan returned to his voting seat.

8) Case 11-8. Petition of Donahue Realty Trust & Daniel J. Donahue, Trustee for property located at **272 Ocean Road (aka 278)** wherein relief was required from the Zoning Ordinance to establish a wholesale lumber yard which requires the following Variances: a) from Section 10.440 Use #13.30 to allow a Wholesale Lumber Yard where the use is not permitted; and b) from Section 10.521 to allow 35% open space where 50% minimum is required. Said property is shown on Assessor Plan 282, Lot 3 and lies within the Single Residence A District.

SPEAKING IN FAVOR OF THE PETITION

Project engineer John Chagnon and Attorney Paul McEachern were present on behalf of the applicant. Mr. Chagnon noted that the property was partially in Greenland. He said it was a proposed change of use and that they wanted to regrade the lot and extend the pavement in the back to connect with the front. He said the access road on the north side would remain and there was additional fencing and tree buffering along Ocean Road. Attorney McEachern said all the industrial uses were on the Greenland side and that the owner would need a variance just to build a single-family home. He reviewed the criteria and said the proposed use was a benign one and the configuration of the lot was the hardship.

In response to the Board's questions, Attorney McEachern said the only road to the parcel was Ocean Road and that the actual access was on another lot where there would be screening by a fence and trees. He said nothing would be done to the lumber while it sat in storage.

Acting-Chair Johnson opened the public hearing.

SPEAKING IN OPPOSITION TO THE PETITION

John Kilroy of 25 Buckminster Way said that traffic was already an issue, even on non-peak hours, and if the property were rezoned for commercial use, it could cause more traffic. He said there was nothing stopping the present or future owner from doing other commercial uses. He said most of the adjacent lots had single-family homes that would be negatively impacted.

Paolo Maldari of 39 Buckminster Way said the Board had to understand that what they didn't see or know could happen, as well as the impact on current and future residents.

Wendy Formichelli of 550 Ocean Road said she lived across the street from the entrance and thought the Board had to be forward-thinking in making its decision. She said the more commercial use that was allowed on that road, the less suitable it would be for single residences.

Steve Griswold of 169 Buckminster Road said he was concerned that the project would affect property values and that he didn't see a hardship.

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. Lee said he had a hard time allowing the variances due to the surrounding residential neighborhood. Mr. Parrott said the City had zoned the lot just right because it was residential and adjacent to a very significant residential district across the street and nearby residences on the same side. He said the requested variances asked for a major change in use from residential to purely commercial. He disagreed that it was unlikely to be developed for residential uses and also noted that he heard no claim that the owner tried to sell the property for residential uses. He said there was no hardship and that the property could be used as a single-family residence.

Mr. McDonell said there were special conditions of the property that distinguished it from others in the area, including that it was right next to the Boise Cascade facility and that the use would be a reasonable one, given its location in relation to the rest of the facility, but he still didn't think there was a hardship. He said the purpose of the ordinance relating to the application was to keep that zone used for large single-family homes, as evidenced by the development across the street and the homes to the side. He said he wasn't sure what the actual lot size was but was confident that if someone proposed to build a single-family home on that site, variance approval would be required. He said the bigger point was that he didn't see the hardship.

Mr. Mulligan said he could see a hardship because the lot was unique and straddled two towns and had a permitted existing commercial use in the Greenland part. He said the application failed

in the public interest and the spirit of the ordinance, and that in order to satisfy those criteria, the applicant had to establish that what was proposed would not alter the essential character of the neighborhood. He said that even though there were commercial uses adjacent to the Portsmouth side of the lot, there were single-family residences or residential uses to the north and south and up and down Ocean Road, so what was proposed was not consistent with the existing neighborhood, a single-family residential zone, which was the most restrictive zoning district in Portsmouth and significant. He said the applicant had to establish that the use was consistent with what was already there. He agreed with Mr. McDonell that, given that it was so close to one acre and even though it would need dimensional relief to site a single-family residence on the lot, he thought it was likely relief that the applicant would get. He said dimensional relief was also needed for what was proposed. He said it didn't meet the criteria for being consistent with the public interest or the spirit of the ordinance and that the applicant had to meet all the criteria.

DECISION OF THE BOARD

*Mr. Mulligan moved to **deny** the variances as requested, and Mr. Parrott seconded.*

Mr. Mulligan said he would incorporate his previous comments. He said that all five criteria had to be met to grant a variance and that granting the variances as requested would be contrary to the public interest and the spirit of the ordinance.

Mr. Parrott concurred. He referred to his previous comments and said he didn't feel that the application met the first and second criteria because it would alter the essential character of the neighborhood. He said that bringing that sort of commercial use and stacking up large quantities of lumber and wood on the lot closer to Buckminster Way and the adjacent homes would be a major change in the neighborhood's essential character.

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

9) Case 11-9. Petition of Karen B. Leon for property located at **284 New Castle Avenue** wherein relief was required from the Zoning Ordinance to construct a front porch and detached garage and add two condenser units that requires the following Variances: a) from Section 10.521 to allow a 3'6" front yard where 30' is required; b) from Section 10.573.20 to allow a 5'6" left side yard where 10' is required for an accessory structure; c) an after-the-fact Variance from Section 10.515.14 to allow a 5 foot right side yard for the condenser units where 10 feet 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 207, Lot 73 and lies within the Single Residence B District.

SPEAKING IN FAVOR OF THE PETITION

Architect Anne Whitney was present on behalf of the petition and introduced the owner Mike Milliken. She distributed some photos and said the two immediate abutters were in support of the

project. She said they wanted to replace the front porch with a traditional one that had access from the side; place a garage where it would not impact the neighbor's river view and would not force the owner to back out onto New Castle Avenue; and a fence for the condenser units.

Mr. McDonell asked what drove the garage to be that far back. Ms. Whitney said it was the turnaround and to preserve the views of the owner and neighbor. She said the more offending side of the garage was the same one as the preserved view.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. McDonell said the request was to ask for after-the-fact relief for the condensers as well as encroachment on the right-hand setback, front yard relief for the porch addition, and left yard relief for the garage. He said the porch and garage were reasonable additions and tasteful. He said granting the variances would not be contrary to the public interest nor the spirit of the ordinance because there would be no alteration to the neighborhood's essential characteristics and no harm to the public's health, safety and welfare. He said substantial justice would be done because the benefit to the applicant was not outweighed by any benefit to the public. He said that potentially some harm could be done to some neighbors due to the construction of the garage but that it was sited in such a way that it seemed reasonable for everyone concerned. He said granting the variances would not diminish the value of surrounding properties, noting that views would be preserved. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions with respect to the porch and condensers and the way the house was sited. He said the relief was needed in order to have a porch one could walk on. He said the special condition of the garage was the jog in the rear lot line. He said there was no fair and substantial relationship between the general purposes of the ordinance and their application to the property and that the proposed use was a reasonable one.

Mr. Parrott concurred with Mr. McDonell and said it was a nice upgrade to the property that would consider the concerns of the neighbors and would be a bonus to the neighborhood.

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

IV. OTHER BUSINESS

A) Board of Adjustment Rules and Regulations.

It was moved, seconded, and passed unanimously to approve the BOA Rules and Regulations.

V. ADJOURNMENT

*It was moved, seconded, and passed unanimously to **adjourn** the meeting at 10:26 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary