

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

7:00 P.M.

DECEMBER 17, 2019

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

MEMBERS EXCUSED: Christopher Mulligan

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheume read the three withdrawn petitions into the record.

I. ELECTION OF OFFICERS

*It was moved, seconded, and passed unanimously to **re-elect** Chairman Rheume and Vice-Chairman Johnson.*

II. APPROVAL OF MINUTES

A) November 19, 2019

*It was moved, seconded, and passed unanimously to **approve** the November 19, 2019 minutes as amended.*

Chairman Rheume asked that Case 12-6 be taken out of order to postpone. He then recused himself from the vote, and Vice-Chair Johnson assumed the seat of Acting Chair.

It was moved, seconded, and passed to take Case 12-6 out or order.

Acting-Chair Johnson read the petition into the record.

Minutes Approved 1-22-20

*Mr. Hagaman moved to **grant** the request for postponement, and Mr. McDonell seconded.*

Mr. Hagaman said the request to postpone was the first request and was related to reducing the requested variances, so he thought it was reasonable to postpone. Mr. McDonell concurred and had nothing to add.

*The motion **passed** by unanimous vote.*

Chairman Rheume resumed his seat as Chairman and Acting-Chair Johnson resumed his seat as Vice-Chair. Chairman Rheume said Alternate Ms. Eldridge would take a voting seat.

III. OLD BUSINESS

Ms. Eldridge took a voting seat.

A) Motion for Rehearing regarding property located at 53 Tanner Street.

Chairman Rheume read the petition into the record.

Mr. Formella said he was absent from the November meeting but had reviewed the minutes and thought the motion to rehear didn't raise any new information. He said the previous discussion was good and the reasons for denying the request made sense, and he saw no reason to support a motion for a rehearing. Chairman Rheume noted that he was also absent from the previous meeting but had reviewed the minutes and watched the video. He said the discussion was thoughtful and addressed all the criteria, and that the applicant did not provide much in the way of discussion as to any particular error by the Board. He said the applicant had the opportunity to speak to, for, or against the petition during the public hearing to address comments from abutters and the public but chose not to, so the public hearing was rightfully closed.

*Mr. Formella moved to **deny** the request for rehearing, and Ms. Eldridge seconded.*

Mr. Formella reiterated that there was good discussion at the November meeting, all the criteria were addressed, and the reasons for denying the variance made sense. He said the applicant restated some arguments previously made but didn't bring forth any new information. Ms. Eldridge said it was a thorough discussion and that the Board felt there was no hardship.

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

IV 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.)

It was acknowledged that the petition had been withdrawn.

B. 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.

It was acknowledged that the petition had been withdrawn.

V. NEW BUSINESS - PUBLIC HEARINGS

Alternate Mr. Hagaman took a voting seat. Ms. Eldridge resumed alternate status.

1) Case 12-1. Petition of Galaro Properties, LLC, owner, and Portsmouth Buddhist Center, applicant, for property located at **175 High Street, Suite 2** wherein relief was required from the Zoning Ordinance to allow a religious place of assembly which requires the following: A Special Exception under Section 10.440 Use #3.11 to allow a religious place of assembly. Said property is shown on Assessor Plan 118, Lot 16 and lies within Character District 4.

SPEAKING IN FAVOR OF THE PETITION

The applicant Bettye Pruitt, Manager of the Portsmouth Buddhist Center, was present and noted that they had a lease to rent the space for the next five years. She said they taught classes on meditation and Buddhist teachings, and that they also had some evening and weekend activities. She reviewed the criteria and said they would be met.

In response to Mr. Hagaman's questions, Ms. Pruitt said the new location would allow them to do additional activities and events comparable to their activities at previous locations and that they would also offer yoga a few times a week. She said that none of their activities involved music that would interfere with the apartment tenants above them. Vice-Chair Johnson asked

whether the Center had previously had evening activities at their other locations, which also had apartment above and around them. Ms. Pruitt said they had and that there were no problems.

Chairman Rheume opened the public hearing.

Mary Ellen Burke of 14 Porpoise Way said she was in favor of the petition and thought the Buddhist Center would be a great addition to the downtown area.

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

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

DECISION OF THE BOARD

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

Vice-Chair Johnson said it was a logical location near a variety of mixed uses that also surrounded residential uses and would be a good complement to them, and that a lot of the time periods during which the space would be used were the opposite of some of the adjacent spaces. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials and so on. He said the applicant had not represented any proposed use that would indicate concerns with that, and he noted that the most recent use of the space was a hair salon, which might have involved greater use of some of the specific criteria. He said 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 or businesses and so on. He said a lot of the items in that criteria were pertinent to that particular use, but seeing that it was an existing building in an existing space with comparable uses, he saw no concern for the items listed. He said granting the special exception would pose no creation of a traffic safety hazard or substantial increase in the level of traffic or congestion in the vicinity and so on, and he referred to his previous comments about the space's previous use. He said it was a well-suited area for the ebb and flow of people who would use the space and that it would be comparable to the businesses surrounding it.

Vice-Chair Johnson stated that the proposal would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police, schools, and so on because it was the type of place where people tended to be for a few hours maximum, and he saw no marked increase of utility uses for the site compared to the surrounding homes and former uses. He said granting the special exception would pose no significant increase of stormwater, runoff onto adjacent properties and streets and so on. He said there were no proposed physical alterations to the building, so he didn't find that criteria to be very relevant. He said for all those reasons, the application should be approved.

Mr. Hagaman concurred and had nothing to add.

The motion passed by unanimous vote, 7-0.

Alternate Ms. Eldridge took a voting seat. Mr. Hagaman resumed alternate status.

2) Case 12-2. Petition of DPF 1600 Woodbury Avenue LLC & c/o Marvin F. Poer & Company for property located at **1600 Woodbury Avenue** wherein relief was required from the Zoning Ordinance to install a fifth freestanding sign which requires the following: a) A Variance from Section 10.1251.30 to allow a 99.32 square foot free standing sign on the same street as the primary driveway where 40 square feet is the maximum allowed; b) A Variance from Section 10.1243 to allow a pre-existing sign in a location with no associated secondary driveway; and c) A Variance from Section 10.1251.30 to allow a pre-existing sign that exceeds the 12 foot maximum height. Said property is shown on Assessor Plan 238, Lot 16 and lies within the Gateway Neighborhood Mixed Use Corridor District (G1)

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen was present on behalf of the applicant. He said there would be a major renovation to the shopping plaza to accommodate the first-class grocery store. He reviewed the petition, noting that the new driveway would be the primary entrance to the site. He said the new sign would be placed in the primary driveway for the grocery store and met all the criteria for a primary sign. He reviewed the criteria and outlined how they would be met.

Mr. Hagaman asked what would go in the new entrance to manage traffic coming off Woodbury Avenue. The project engineer Steve Glowacki said it was recommended that they put a four-way stop sign at that intersection to control the traffic at that convergent point. He said there would also be a right-in/right-out and robust directional signs to control interior traffic as well as traffic heading out to Woodbury Avenue. In response to further questioning from Mr. Hagaman, Attorney Bosen said they wanted a new sign instead of adding signage to the existing Durgin Square tenant sign so that they would have more visibility. He said the road was very busy and had trees, fences, and so on, and the existing Durgin Square sign didn't provide enough visibility for the grocery store. He said it was critical for his client to have signage because the building sat behind other buildings and sat back from Woodbury Avenue, so people would go by the drive and miss it if there wasn't a new sign. Mr. Lee asked whether northbound traffic on Woodbury Avenue would have to take a left turn across traffic. Attorney Bosen said it wouldn't be permitted due to the way the drive would be engineered. He also noted that the existing Qdoba sign would remain and made compliant.

Chairman Rheume asked for verification that the sign on Durgin Lane was fully compliant as a free-standing sign on a secondary entrance that was on a different street from the primary driveway. Attorney Bosen said that was what the Planning Department determined. Chairman Rheume said he was sympathetic with Attorney Bosen's argument that the hill was a hardship

and traffic would pass the main portion of the business, but he said the constellation of signs had a long history and that all the granted variances since 1993 were associated with signage on that property. He said one of the signs wasn't covered by those actions, and he asked if there **was** some public benefit from reducing some of the signage and perhaps eliminating the sign that the applicant was asking relief from and putting that information on the primary entrance sign. He said his main argument was that Attorney Bosen spoke about distracting elements but now had the usual clutter of signage right by the roadway. He said it would be a public benefit if all the information could be placed on the main sign. Attorney Bosen said the Game Stop sign, which was much taller than the proposed sign, would be removed and would be a public benefit. He said that reducing the overall intensity of the site by demolishing the Game Stop building would also be a benefit. He said signage was critical in retail and didn't think reducing any of the pre-existing compliant signs was in play.

Chairman Rheume said there was a balance between the business owner and making sure that people were aware of the business, and he further discussed it. He said the relief being asked for the sign was that it wasn't on an associated driveway, and he asked if there were some way the signage could be consolidated, noting that there was already some existing wall signage. Attorney Bosen said the property was very large and had two entrances off Durgin Lane, frontage on Woodbury Avenue, and access on Brady Drive. He said the ordinance allowed one free-standing sign on each of those entrances, and the brand new entranceway needed a prominent sign for a very prominent tenant, who was also the driving force. Chairman Rheume said he had some sympathy for the anchor tenant's need for a primary entrance.

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 explained how the applicant made a good argument for a unique hardship. He said it was possible to put the information on the primary sign, which had room for it and would reduce visual clutter and make it apparent where drivers would need to go to access the two businesses. Ms. Eldridge said people would consider it a primary entrance and would want a large sign to direct them on how to get in there. She said it seemed reasonable and wouldn't add much more clutter because there were lots of signs up and down Woodbury Avenue.

DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the variances for the petition, and Mr. Lee seconded.*

Mr. McDonell said there were two parts: one was the request for the new sign, and the other were a few requests for the existing sign. Relating to the new sign, he said what was driving the noncompliance was that the drive wasn't a primary driveway, but he thought it would appear to be the primary driveway for the grocery store if not for much of the rest of the site and not so

much for northbound traffic because they wouldn't enter that way. He said it would give the appearance of being the primary driveway, which made it reasonable for the large sign to be there, coupled with the fact that there wouldn't be some larger sign somewhere else. He assumed that the grocery store would have its name on other signs on the site but that it didn't look like it would be a very large sign, like a primary sign. He said the hardship was the fact that it was a pre-existing sign but, more than that, it was relief for the sign itself in its location and for exceeding the maximum height. He also noted that a hardship was articulated for not being able to see as well when going over the hill. He said granting the variances would not be contrary to the public spirit and would observe the spirit of the ordinance, and that he didn't think there would be any alteration in the character of the neighborhood or the public's health, safety, or welfare because the grocery store would remain a grocery store and the entryway would not change the character of the neighborhood.

Mr. McDonell said that substantial justice would be done because he couldn't imagine any harm to the general public, and the proposed new sign wasn't small but was relatively small for that sort of use, which he thought was reasonable. He said it was a clear benefit to the applicant in pointing people to the location. He said granting the variances would not diminish the value of surrounding properties and that no evidence was seen that there would be a negative effect on property values by allowing the existing sign to remain and the new sign to be put up. He said that literal enforcement of the ordinance would result in unnecessary hardship, noting that there was a hill to overcome, a very large plaza, and an articulated need for signage to be more directly in front of the store than the other signage available. He said those were special conditions of the property that distinguished it from others in the area. He referred to his earlier comment regarding the hardship on the existing sign. He said he saw no fair and substantial relationship between the purpose of the ordinance provisions as far as signage and their specific application to the property. He said the proposed use was a reasonable one and for all the reasons stated, the petition should be approved.

Mr. Lee concurred and had nothing to add.

The motion passed by a vote of 6-1, with Chairman Rheume voting in opposition.

Alternate Hagaman took a voting seat. Ms. Eldridge resumed alternate status.

3) Case 12-3. Petition of Richard Alexander Hartley and Annelise Connors Hartley for property located at **452 Richards Avenue, Unit 1** wherein relief was required from the Zoning Ordinance for approval of a second dwelling unit in Unit 1 which requires the following: a) A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,585 square feet where 7,500 square feet per dwelling is required. Said property is shown on Assessor Plan 112, Lot 6-1 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

Attorney Sharon Sowers was present on behalf of the applicant and stated that they were seeking relief from the lot area per dwelling requirement in order to use an apartment in their condominium unit. She said the applicants purchased the unit about a year before, with the understanding that it contained an apartment that had been in use since 1995 and that the revenue from leasing it was a vital part of their planning. When they learned that the apartment wasn't legal, they took steps to rectify the problem by seeking relief. She said there were no concerns from abutters except for one letter that was submitted that day. She reviewed the criteria and said they would be met. The applicant Annalise Connors Hartley said they wouldn't have purchased the condominium if there was no apartment to rent, and she explained how she and her husband were led to believe that the apartment was legal.

In response to Mr. Hagaman's questions, Attorney Sowers said there was currently a tenant, the apartment had a kitchen, and that some interior changes might be required by the Building Inspector if the variance was granted. Mr. Parrott asked if there was anything in the record indicating that the Inspection Department had entered the apartment and had looked over the construction of the stairway. Attorney Sowers said the Inspector did not go inside the apartment, but there was a permit granted for the exit to the apartment and the stairway, but nothing on the interior. Mr. McDonell asked whether any exterior changes were planned. Attorney Sowers said they didn't plan to and that the home inspection had no issues. She said the Building Inspector didn't want to do an inspection until the Board made a decision, but that any requested changes from the Inspector would be in the interior only. She said it could be required that the railing height on the stairs be increased or some other minor fix. Mr. McDonell asked what was meant by the property being a compound. Attorney Sowers said the property was unlike neighboring properties because it was one large lot with several structures on it, including one-family and two-family dwellings, making it like a compound.

In response to Mr. Formella's questions, Attorney Sowers said the apartment was almost 500 square feet and that the City had not granted a Certificate of Occupancy indicating that the apartment was used as a separate unit. Chairman Rheume asked whether both condominium units were under common ownership before. Attorney Sowers said it was one condo unit that was previously owned by ASI and happened to have an apartment. In response to further questions, Attorney Sowers said four condo units and one apartment made up the five dwelling units and that the previous owner made the dwellings condominiums in 2018.

In response to Mr. Hagaman's questions, Attorney Sowers said the apartment had four dedicated parking spaces for the applicant's unit, two in a garage and two outside, and that one or two of those spaces would be for the apartment. She said the parking would remain dedicated parking if the apartment was legitimized and that the apartment would be maintained as a stream of income and not made into a separate condo unit. She added that the apartment had been rented as a separate unit for the past 25 years.

Chairman Rheume opened the public hearing.

Tom Nies of 419 Richards Avenue said he was an abutter and was sure that the apartment had been occupied since 1995 if not earlier. He said the property was consistent with the neighborhood's character and would have no impact on his property's value, and that the apartment would provide affordable housing, which was difficult to find.

SPEAKING IN OPPOSITION TO THE PETITION

Chairman Rheume said there was a letter of opposition from an abutter who lived there in 1995 when the additional egress for the apartment was built.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Sowers referred to the abutter's comments and said the exterior stairway and egress had been in place for 25 years, and that a few minor changes would not impact the abutter's property values. She said she submitted photos of the stairway and that it would not be changed.

DISCUSSION OF THE BOARD

Vice-Chair Johnson said he agreed with the applicant that there wasn't much the Building Inspector would require that would create drastic exterior renovations. He said there might be things like stair and railing heights and other interior changes but nothing major. Mr. Parrott said it was in the public interest to bring a unit up to code that had been used for a long time without adverse effects on the neighborhood and that he would be in favor of a motion to approve. He said it was obvious that the exterior would not be changed and that there would be no change in difference in use other than the apartment being official.

Chairman Rheume said he empathized with the applicant's situation but also thought of 'buyer beware' because it was important to understand what someone was buying into. He reviewed the two Board actions from 1979 and 1995, noting that there were five dwelling units recognized in 1979 but there were stipulations in the 1995 action for no kitchen and no separation of the dwelling unit. He said it seemed, however, that the unit had been used as an apartment with no complaints from abutters for quite some time. He said he wasn't usually inclined to overturn the Board's previous stipulations or decisions, but he felt that the nature of the City had changed and that there were lots of Accessory Dwelling Units (ADUs) being approved, so with those considerations, he said the Board would be willing to countermand what a previous Board had done. He said enough had changed and noted that the 1979 action recognized five units, so he was in favor of granting the petition.

DECISION OF THE BOARD

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

Mr. Lee said 'in perpetuity' was a long time. He said the original granting was in 1995 and that the Board was given the opportunity to make a new decision. He said it was just a sort of

housekeeping thing that would fix something incorrect for a number of years. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public. He said granting the variance would not diminish the value of surrounding properties. He said hardship was a special consideration of the property and the restriction didn't serve the purpose in a fair way.

Mr. Parrott concurred and said he would refer to his earlier comments.

Vice-Chair Johnson noted that the Board had had cases in front of them involving lots of property ownership turnover and people asking forgiveness for things they didn't do. He said the convincing act on the applicant's variance request was the long-term use of the property as it currently existed, which reinforced the fact that the hardship was real and proved that it wasn't a density issue in that particular neighborhood and on that property. He said the apartment didn't get fit up in a traditional manner if the 1979 approval was interpreted as allowing a five-unit building, and one way of looking at it would be the 1995 variance disregarding the 1979 variance because they were putting limitations on what the previous Board allowed. He said he would support the motion. Chairman Rheume said he would also support it, noting that an addition of an exterior stairway could be a potential stumbling block, but that it was an existing stairway approved with stipulations and at that point in time, the setup for the apartment being an apartment was finalized. Mr. Hagaman said Attorney Sowers made a persuasive argument that not granting the variance would be like a punitive measure for the applicant.

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

4) Case 12-4. Petition of Clipper Traders LLC and Portsmouth Lumber & Hardware, LLC, owners, Iron Horse Properties, LLC, owner and applicant for property located at **105 Bartlett Street aka 0 Bartlett Street** wherein relief is required from the Zoning Ordinance to construct two multi-family structures, one mixed use structure, renovate existing building for use as an amenity building, and relocate two existing storage structures on an adjacent lot which requires the following Variances: a) from Section 10.516.20 to allow a 5'6" side yard adjoining a railroad right of way where 15' is required; b) from Section 10.5A41.10A to allow an 86' side yard where a minimum of 5' and a maximum of 20' is required; c) from Sections 10.5A43.31 & 10.5A46.10 to allow a portion of a building to be three-stories, 40' in height, where a two-story, 30' in height, building is permitted in the CD4-L1 zone; and d) from Sections 10.5A43.31 & 10.5A46.10 to allow a portion of a building to be five-stories, 60' in height, where a four-story, 50' in height, building is permitted in the CD4-W district. Said property is shown on Assessor Plan 157, Lots 1 & 2 and Assessor Plan 164, Lot 4-2 and lies within Character District 4-W (CD 4-W) and Character District 4-L1 (CD4-L1).

It was acknowledged that the petition had been withdrawn.

Alternate Ms. Eldridge took a voting seat. Mr. Hagaman returned to alternate status.

5) Case 12-5. Petition of Peter J. Ehnstrom & Diane H. Desantis for property located at **270 Meadow Road** wherein relief was required from the Zoning Ordinance to subdivide one lot into two which requires the following Variances from Section 10.521: for Proposed Lot #16: a) to allow a lot area and lot area per dwelling unit of 10,005 square feet where 15,000 square feet is required for each; b) to allow a lot depth of 85 feet where 100 feet is required; and c) to allow a 26 foot front yard setback where 30 feet is required; for Proposed Lot #16-1: d) to allow a lot area and lot area per dwelling unit of 10,004 square feet where 15,000 is required for each; and e) to allow a lot depth of 85 feet where 100 feet is required. Said property is shown on Assessor Plan 236, Lot 16 and lies within the Single Residence B District.

SPEAKING IN FAVOR OF THE PETITION

Mr. Stith said the Planning Department felt that the front yard variance wasn't necessary, and he suggested that the Board move forward on the Lot 16 variance requests. The Board agreed.

Attorney Derek Durbin was present on behalf of the applicant and noted that a letter of support from Karen Pierce was distributed to the Board as well as a letter from Janet Bagley addressing diminution of surrounding property values. He reviewed the petition and criteria in detail.

In response to Mr. Hagaman's questions, Attorney Durbin said it wasn't decided whether the lot would be sold after subdivision and that his client didn't plan to build something immediately. He said a large structure in size could be produced for a single family residence that could be 2,500 square feet or larger but that there were no building design plans.

In response to Chairman Rheume's questions, Attorney Durbin said Eversource had a 50-ft power easement on his client's property for overhead power line maintenance that could include potential structures. Mr. McDonell noted that the lot behind the proposed new lot had a driveway that looked to be under the easement. Attorney Durbin said he had seen garages and houses but never a driveway being issued. Chairman Rheume explained why he thought the project was going right up to the allowable building area. Attorney Durbin said his client would be open to scaling it back in one direction. In response to Mr. Parrott's questions, Attorney Durbin said the proposed dividing line between the two lots was situated where it was to make them near equal dimensions and more consistent with surrounding properties, resulting it roughly splitting the lot in half. He said the power line easement with the full 50-ft width was included on the new lot.

Chairman Rheume asked what the applicant was basing his assertion about the lot being large relative to the neighborhood on. Attorney Durbin said it was the tax map, noting that most of the properties west of Meadow Road had 75 feet of frontage and about 7,500 square feet in lot area. He said a lot of the properties were smaller than what his client proposed for two lots.

Mr. Stith circulated a neighbor's letter that was submitted late that day.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one rose to speak.

SPEAKING IN OPPOSITION TO THE PETITION

Robert Sawyer of 275 Meadow Road said one of the selling points when he bought his home directly across the street from the applicant's was an assurance that the empty portion of 275 Meadow Road was not a buildable lot. He said putting two significantly smaller lots in an area surrounding by 20,000-s.f. houses would reduce the surrounding property values and change the neighborhood's appearance. He said there was a significant drainage problem in the neighborhood. He distributed four photos of standing water from rainstorms and said he was concerned that putting a house on that lot would remove a substantial amount of land that was already saturated with water and would also increase flooding on his property.

Carl Gettelman of 350 Meadow Road said the southern corner of the lot always had wetland plants, and he was concerned that placing a building there would cause that water to further run into surrounding lots. He said he was also concerned about the size of the lots being consistent with surrounding lots, noting that almost all the house lots were bigger and further apart.

Alan Gordon of 620 Woodbury Avenue gave copies of his realtor's letter to the Board, which he said indicated that an abutting rental property would be a concern for potential buyers living next to it. He said that any excavation could change the water table and increase the amount of water that already accumulated in his basement from heavy rainstorms.

Walter Lewis of Woodbury Avenue distributed some material to the Board that indicated significant water drainage issues. He said a large portion of Lot 16-1 met the definition of wetlands and had tremendous amounts of water.

Justin Richardson of 583 Woodbury Avenue said the project would have an adverse effect on the neighborhood. He said the transmission line would add restrictions on use on 42.5 percent of the proposed lot, which would make it a much smaller lot. He pointed out uses that would affect the right-of-way and said basic items like sheds and wells would be prohibited.

Marc Chisolm of 347 Meadow Road said the water issue was a big problem because it collected on the property and went into adjacent lots. Mr. Hagaman asked if the City had been contacted to rectify drainage issues. Mr. Chisolm said there was a drain on the opposite side of the property but that snowbanks created a huge effect and the water went onto his property.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Durbin said drainage in the area could be improved by going through a subdivision site plan process and having a drainage study done. He said the applicant could not run water onto someone else's property, so the project was an opportunity to improve drainage in the area. He said the lot was unique and that there was only one surrounding property of the same size that was right behind it, otherwise the other properties were smaller and one abutting property was two deeded parcels. He explained why the drainage issue was a red herring thrown at the Board.

Stacy Szmyt of 690 Woodbury Avenue said the applicant had not resided in the home for seven years but rented it out and that the proposed second home would also be rented. She said the applicant didn't meet any criteria and that the project would devalue her property by affecting her yard and open space and would change the look of the neighborhood.

Justin Richardson said that putting a house on the edge and raising the lot would impose burdens on the public. He said there was no hardship because the lot was square and flat and too small to allow another conforming lot to be constructed. He said the purpose of the 15,000-s.f. requirement was to prohibit things like a lot from being made so small that it forced parking areas to be placed under high-voltage transmission lines.

Walter Lewis said all the surrounding properties had an excess of 15,000 square feet, with the exception of two in the watershed that only had 14,000 square feet. He said there was also a fence that went over the property line. He explained why the proposal didn't meet the five criteria and said it wasn't reasonable to put a house in a wetland.

Steve Szmyt of 690 Woodbury Avenue said the property was at the lowest point of Meadow Road and that it wouldn't be profitable for the City to fix everything so that the applicant could build. He said he was told by Eversource that he couldn't build a shed on the edge of his property. He also said there was a town line on the property.

Attorney Durbin said the property was being characterized as a wetland by the neighbors but that there was never any evidence that it was a wetland property. He said it was very unfair to the applicant to characterize the property as such, despite the drainage issues.

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

DISCUSSION OF THE BOARD

Vice-Chair Johnson said 50 percent of the parcels in the City's SRB zones were 10,000 square feet, and he noted that every house on his street was identical to the next one. He said 10,000 square feet was plenty of space to build a house. He said he was torn because approving a hardship was a tough ask for taking an existing conforming lot and splitting it in half and say there were two non-conforming lots. He said that the additional water issues was a challenge. He said that by splitting the lot and looking at the rectangle, there were 40 properties on the tax map that were exactly 10-11,000 square feet. He explained in detail why the character of the surrounding neighborhood argument was a tough one for him to buy into. He said he saw a lot of

positives in splitting the property off and developing a small house and that the biggest hang-up was the water issue. He noted that the past rainstorm that the abutters mentioned was like a 5-year storm and unusual. He also stated that it wasn't the owner's responsibility to provide failsafe measures to protect the neighboring properties, and he thought the property actually helped the other properties by being a sponge to soak up rainwater.

Mr. Parrott said the Board was looking at a lot that was already substantially non-conforming with respect to the lot depth that was already substandard. He said the proposal was to make two substantially substandard lots in more ways than the present one and that there had to be a hardship criteria to do that. He said he couldn't see anything inherent in the lot that argued that the requested variances made sense, and he couldn't find a hardship. He said the amount of relief requested was very substantial and thought the nearby lots carried a lot more weight than a bunch of lots way down the street. He said the nearby lots were substantially larger than 10,000 square feet, and if the Board approved two lots, it would not be consistent.

Mr. McDonnell said when he came up Meadow Road from the south and got to the lot, it didn't look like two lots but rather looked like a house and some space and then a house and more space. From the north, he said it didn't look like putting another house between the existing one and the house to the south of it would make that much of a visual change that would change the essential character of the neighborhood. He said there was some concern about drainage issues, but otherwise, he didn't see a hardship because he didn't see that there were special conditions of the property that distinguished it from others. He said the lot across the street had the same frontage and depth, but the house itself was elongated and built toward the lot's center, whereas the applicant's lot had an existing home all the way over to one side of the lot, which lent itself to being split in half. He said it was driven by the fact that it was a higher part of the lot and/or the power lines and 50-ft easement didn't preclude any kind of improvement but included some improvements. He said he couldn't see the hardship that warranted splitting the lot down the middle and saying that two reasonable lots would fit there.

Mr. Formella said there was definitely space on the lot to build a second home and didn't think a 10,000-s.f. lot was unreasonable and would alter the character of the neighborhood, but he couldn't see how it met the hardship criteria. He said there were other similar-sized lots and didn't think the applicant's lot was unique enough to meet the hardship requirement, noting that it had existed that way for 30 years and had never been buildable. He said the Board would be creating a lot of additional value for the applicant. He concluded that the lot was not unique enough to justify that type of deviation from the ordinance's requirements. Ms. Eldridge said that coming from the north was a perfect example of what the property would look like with two houses on it and that she still didn't see a hardship.

Chairman Rheame said the Board increasingly saw petitions come before them with properties that had been around a long time, with some portion of them having some impediment to having a house built on it. He said when the subdivision occurred decades earlier and the property values were different, the decision was that a portion of the lot had a granite edge or water or faced the wrong direction, which drove the property to be used in a certain way, but now that

property values had massively increased, people thought it was lucrative to deal with all those issues and build a house as a return on investment. He said the Board approved some of those applications and disapproved others, and he said he didn't see any 'missing tooth' effect for that particular property. He said there were mitigation methods to deal with the water issues. He said the power line easement was another issue that made splitting the property into two less desirable and that mitigation methods might involve structures that wouldn't be allowed under the easement, but what it came down to was that it wasn't obvious that the hardship was the missing element to the neighborhood. He said he didn't see the hardship and thought the applicant was asking for a lot of relief that was burdened by a lot of concerns.

DECISION OF THE BOARD

*Mr. McDonell moved to **deny** the variances for the petition, and Mr. Lee seconded.*

Mr. McDonell said the application only had to fail on one ground and that the clear ground it failed was hardship, noting that to show a hardship, one had to show special conditions of the property that distinguished it from others in the area. He said that, due to those conditions, there wasn't a fair relationship between the purposes of the ordinance's provision for which a variance was requested and its application to the property. He said the proposed use was a reasonable one, but the special conditions articulated were not sufficient to say that, because of those conditions, the Board would agree to subdivide the property into two roughly equal pieces. He said he didn't think the Board got there from looking at the shape of the lot and the long frontage and the location of the house, and that the special conditions were the lot's topography and the southern 50 feet of it that was burdened by an easement that prevented things from being developed on it. So, if there were special conditions that really distinguished the property from others in the area, they probably mitigated against granting a variance in a case like that. For that reason, he said the variance request should be rejected. He noted that another of the special conditions stated by the applicant was the location of the house, which he thought was probably due to the easement. He said he didn't think the special conditions that had been articulated except for the location of the easement and the drainage issue were enough to say that the Board should grant relief.

Mr. Lee concurred with Mr. McDonell, adding that having a house on that lot would not diminish the value of the neighborhood, but the property failed on the hardship criteria.

Chairman Rheume said he would support the motion because he thought that taking a fully compliant existing lot and breaking it into two non-compliant lots created a high burden in terms of the balancing test. He said the spirit of the ordinance was affected because it tried to minimize the creation of non-conforming lots.

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

Alternate Mr. Hagaman took a voting seat for this petition. Ms. Eldridge remained in a voting seat.

6) Case 12-6. Petition of Nickerson Home Improvement Company, Inc. and James S. Remick, Trustee of James S. Remick Revocable Trust of 2000 and Linette S. Remick, Trustee of Linette S. Remick Revocable Trust of 2000, owners and Perley Lane LLC, applicant for properties located at **95 Brewster Street and 49 Sudbury Street** wherein relief is required from the Zoning Ordinance to demolish existing structures, merge two lots into one and construct 3 dwelling units which require the following Variances from Section 10.521: a) to allow 45% building coverage where 35% is the maximum allowed; and b) to allow a 5’ rear yard where 20’ is required. Said properties are shown on Plan 138, Lots 57 and 58 and lie within the General Residence C District.

*It was moved, seconded, and passed to **postpone** the petition to the January 2020 meeting.*

VI. OTHER BUSINESS

No other business was presented.

VII. ADJOURNMENT

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

Respectfully submitted,

Joann Breault
BOA Recording Secretary