

**BOARD OF ADJUSTMENT MEETING MINUTES
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting via Zoom Conference Call

7:00 P.M.

OCTOBER 27, 2020

MINUTES

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, Jim Lee, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: John Formella and Peter McDonell

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume stated that both alternates Ms. Eldridge and Mr. Hagaman would vote on all petitions.

I. PUBLIC HEARINGS – NEW BUSINESS

A) Petition of the **Woodbury Avenue Cooperative, Inc., Owner**, for property located at **1338 Woodbury Avenue**, wherein relief was needed from the Zoning Ordinance to demolish the existing structures and replace them with 6 new mobile home units which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,480 square feet where 7,500 square feet per dwelling is required. 2) A Variance from Section 10.334 to allow a lawful nonconforming use to be extended, enlarged or changed except in conformity with the Ordinance. Said property is shown on Assessor Map 237 Lot 70 and lies within the Mixed Residential Business (MRB) District.

SPEAKING TO THE PETITION

Project engineer Jon Warzocha was present to review the petition. He said they were before the Board in 2017 and had received two of the requested variances except for the setback one, but they hadn't been able to get funding to move ahead with the project. He referred to his written criteria assessment and said they would be met.

Mr. Mulligan said the relief granted in 2017 was for a lot area per dwelling of 3,149 square feet, which was less than the proposed 3,480 square feet. He asked whether there were more units proposed in 2017. Mr. Warzocha said there was originally an additional unit that the Board didn't approve, so it was brought down to its current density. Mr. Parrott asked who was responsible for maintaining the property, noting that there was a tipped-over oil tank, personal

belongings, and stuff strewn around that made the property look unkempt. Mr. Warzocha said the residents were all property shareowners who were responsible for their own areas, but there was a board of directors who addressed individual unit concerns. He said they were also working with a group known as ROK-NH that helped resident-owned communities do improvements and secure funding. He said they would address the housekeeping issues. Mr. Parrott said the answer was the same one the Board got the previous time, and that if everyone was responsible, then no one was responsible. He said the neighbors had concerns. He asked if the individual and collective responsibilities would be enforced if the variances were granted. Mr. Warzocha said that granting the variance would be the first step in enforcing the rules. Vice-Chair Johnson asked whether ROK-NH would provide enforcement follow-up or stipulations. Mr. Warzocha said he would discuss it with them and that they'd also have to go before the Planning Board.

Chairman Rheaume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Tom Heany of 30 Wholey Way said he was an abutter and asked if any screening would be done along Woodbury Avenue and whether the dumpster would be moved. Mr. Warzocha said the screening issue would be discussed during the site plan process and that Mr. Heany could discuss his concerns with the cooperative group. He said the dumpster's location could be changed. Mr. Heany said he would support any changes that made the property look better.

Robyn Aldo of 30 Wholey Way said the property was in a deplorable state and hoped the mobile homes would obey current setbacks and that screening would be used, and that due diligence would be done to make the mobile park look more attractive.

Tara Reardon said she was the ROC-NH Director and that they were waiting for a funding commitment to improve the property. She said the abandoned homes and other structures would be removed, that a second egress would be added, and that homes would be repositioned for fire and safety concerns. She said all the work would be done by the end of the following year. She said the residents were long-term ones and were excited to have the property improved.

SPEAKING IN OPPOSITION TO THE PETITION

Chairman Rheaume noted that the Board received a letter in opposition.

Kristen Wade of 1380 Woodbury Avenue said her concern was that six more homes would be added to the mobile park, making the total residences 16, including the three residences at her home. She wondered if the City was setting a precedent for other mobile parks relating to square footage. She was also concerned about the unkempt conditions of the park and how it would look when the structures that shielded the park were demolished.

Patricia Katkin of 1380 Woodbury Avenue said she had lived in her home for 45 years and that the mobile park had never been cleaned up. She said up to six cars parked in the street in front of

the store area or in front of her house, preventing her from going into her driveway at times. She asked how it would improve if more people were placed in that area.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Warzocha clarified that they would not increase the density and that the property would have the same number of units, with mobile homes replacing the demolished structures.

Ms. Eldridge said if the Board denied the variances, there wouldn't be money to upgrade the property. She asked if the parking rule was being followed. Mr. Stith said the applicant had to comply with the parking rule, otherwise he would get a Conditional Use Permit (CUP). He said the applicant was still working on the site plan, but typically units over 71/2 square feet needed 1.3 parking spaces per dwelling. Ms. Eldridge said there was no reason to believe that the applicant would not be in compliance. Vice-Chair Johnson agreed, noting that it was hard to improve the mobile park without getting an incentive or increasing its value to get the investment. He said community-owned cooperatives were a challenge, and the fact that the density would be equal and would remain less than the previously-approved one meant that the dimensional requirements providing for light, air, and security were less. He said it was a good project and that a renovated and nicely kept mobile home park would be less of an eyesore than the existing decrepit store and other buildings. Mr. Lee suggested stipulating that some vegetation could provide screening. Chairman Rheaume said the requested relief wasn't excessive and that the applicant was just reconfiguring the intensity, but some of the mobile homes would be more visible to the public, which the Planning Board would address. He noted that the area had changed due to all the businesses surrounding it and that the mobile park would provide more affordable housing in the City.

DECISION OF THE BOARD

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

Vice-Chair Johnson referred to his previous comments and said it was important to foster that type of co-op living arrangement. He said it would take a more global investment to bring some of the lagging needs and aesthetics up to par, but that the 3-5 new units would be quite different looking than what was currently there. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance because the density tied into the setback and allowed room for people to live and have light, air, circulation, and safety while having their own individual space. He said it didn't appear that the current intensity of the use was overbearing to the property and that the new units would be smaller than the current wooden structures. He said substantial justice would be done, noting that he understood the neighbors' concerns but thought the scale tipped toward the applicant and the benefits that would be gotten

versus any negative benefits to the public. He said granting the variances would not diminish the values of surrounding properties. He said the wooden buildings were derelict and affected current property values and that a marked visual improvement of the property, added with mobile home sales, would keep the property values at least neutral if not improved. He said the special conditions of the property were its haphazard layout and current use of the property carved out around multiple buildings. He said it would be better if the property were a perfect square and uniform grid, but the location of the buildings slated for demolition and the haphazard layout were the biggest special conditions. He said the residential use would continue and was currently surrounded by a mix of residential and commercial uses.

Mr. Lee concurred with Vice-Chair Johnson, adding that two professionals testified that they had secured the funding and had guidance.

The motion passed by unanimous vote, 7-0.

B) Petition of **Bacman Enterprises, Inc., Owner**, for property located at **140 Edmond Avenue**, wherein relief was needed from the Zoning Ordinance to redesign previously approved parking which requires the following 1) Variance from Section 10.1113.20 to allow off-street parking spaces to be located in the required front yard or between a principal building and the street. 2) Variance from Section 10.1114.32(a) to allow vehicles to enter and leave a parking area by backing out into or from a public street or way. 3) Variance from Section 10.1114.32(b) to allow vehicles to enter and leave each parking space without requiring the moving of any other vehicle. Said property is shown on Assessor Map 220 Lot 81 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, with project engineer Alex Ross, and reviewed the petition. He said the Board previously granted nine parking spaces instead of 12, which were sufficient, but after several parking plan revisions resulting from other land board meetings, the City now wanted the property to have the required twelve spaces consisting of 10 for commercial uses and two for residential. He reviewed the criteria and said they would be met.

Mr. Mulligan said it seemed that the previously-approved variance for parking between the principal building and the street was being traded for stacked parking with the same number of parking spaces. Attorney Durbin agreed and said it was one additional variance for the stacked parking over what they were previously approved for. Chairman Rheume asked if the Technical Advisory Committee (TAC) would recommend that spaces 10, 11, and 12 be identified as employee parking. Attorney Durbin agreed. Chairman Rheume asked if the gravel area in front of the property would have changes made to it to prevent people from parking there. Mr. Ross said they discussed posting a no-parking sign when they were before TAC, but there was no signage at all along Edmond Avenue to prohibit parking. He said stacked parking was opted for because TAC wanted to keep the driveway as narrow as possible for plowing.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mulligan said it was the same project that was approved the year before, so all the justifications were carried forward, but what had changed was that the applicant got feedback from the Planning Department and the Planning Staff through the TAC process and stacked parking was added. Given that the request was driven by technical concerns raised in the site review process, he said it was appropriate for the Board to adopt the earlier approvals and approve the new request for stacked parking. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the essential character of the neighborhood would not be altered and the public's health, safety, and welfare would not be threatened. He said the purpose of TAC was to look out for the public's health, safety and welfare, and they were doing so by pushing the applicant toward a stacked parking configuration. He said granting the variances would do substantial justice because the applicant would use the deeper part of the stacked parking as employee parking, which TAC would make a condition of approval for site review. He said the loss to the applicant if the Board denied stacked parking would far outweigh any gain to the public. He said the values of surrounding properties would not be diminished because the property had been in its current condition and use for quite some time, and re-engineering the parking would not have a significant impact on surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions of the development potential adjacent to the building and across the street. He said the wetlands would not be developed and the road wasn't traveled a lot, so stacked parking and backing in and out of the driveway into a traveled way wouldn't be an inoperable condition, even though it might be suboptimal in some respects. He said there was no fair and substantial relationship between the purpose of the parking ordinances and their application to the property. He said the use was reasonable and was previously approved by the Board, so all the criteria were met.

Mr. Parrott concurred with Mr. Mulligan, adding that it was a sensible modification of the previous approvals and that he was glad to see that TAC was looking into details to come up with the best solution.

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

C) Petition of **Karen & Rick Rosania, Owners**, for property located at **32 Boss Avenue**, wherein relief was needed from the Zoning Ordinance to add a second story to an existing dwelling and enclose rear deck which requires the following: 1) A Variance from Section 10.521 to allow a 14' front yard where 30' is required. 2) A Variance 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 Map 153 Lot 5 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Project contractor Corey Boudle was present on behalf of the applicant and reviewed the petition. He said the applicant wanted to add square footage to the home and give it a facelift. He said the wetlands at the rear of the property made it impossible to move the house further away from the property line. He reviewed the criteria and said they would be met.

Mr. Hagaman asked whether the portico could be done without worsening the primary front yard setback. Mr. Boudle said his client wanted a Craftsman-style home and that the portico addition would add to the home's aesthetics as well as protect the entry from adverse weather. Mr. Hagaman asked if there were any alternative designs for the entrance without coming out into the front yard, and Mr. Boudle said they had not explored other design options.

Chairman Rheaume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one was present to speak.

SPEAKING IN OPPOSITION TO THE PETITION

Juliet and Harry McKinnon of 34 Boss Avenue said they were concerned about the project's timeline, due to their unobstructed view of the applicant's home. They thought the proposed structure would be more nonconforming than the existing one, would overwhelm the lot and not be in character with the neighborhood, and would negatively impact their home. They said the hardship seemed self-imposed because the existing home was in excellent condition.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Lee said all the surrounding homes were two-story ones, so he thought converting the home to a two-story one would make it more in conformance with the neighborhood. Mr. Parrott agreed and said the construction was substantial but the actual requested variance was small by comparison, being only four feet and not even a full height addition. He said the front portico would make the house look better and was more appropriate as a front entryway. Chairman Rheaume said the requirement was for a 30-ft front setback, so the addition of the second story was within the front setback. Mr. Stith agreed and said the applicant would have to go before the Board for the vertical expansion even if he didn't propose a portico. Mr. Parrott said his comment was related more to the existing structure, where it went up within a few feet of the

existing front wall. He said the vertical expansion was within the 30 feet, but the whole front of the house was already within 30 feet anyway.

DECISION OF THE BOARD

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

Mr. Lee said the requested relief was slight, only four feet to accommodate a porch, but it was already there, so it met all the criteria. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because it would not threaten the public's health, safety, or welfare. 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 variances would not diminish surrounding properties because the addition would not have a negative effect impact on them. He said the hardship was that the applicant already had an encroachment that had to be maintained in order to build the addition. He said aesthetically the front porch would require another four feet, which wasn't a huge deal. Based on those reasons, he said the variances should be granted.

Mr. Parrott concurred and referred to his previous comments. He said the location of the requested four feet was directly across from the opening to Sunset Road, so it was pointed at a street and not someone's property, which meant that the four feet was even less impactful.

Chairman Rheume said he thought there was a potential impact from the second-story addition and that the Board often considered those types of situations but were usually dealing with a side or rear setback. He said the concerns were always light and air impact on surrounding properties, but in the applicant's case, it was front setback, so he wasn't as concerned about it. He said the property was centrally located across from another street entryway, so there wasn't a lot of potential for surrounding property diminishment, and no side variances were requested. He noted that the side wetlands drove the location of where the structure could be and also drove the initial placement of the structure, so it was unrealistic to have the applicant relocate the house back to the 30-ft requirement if they wanted to expand onto it. He said it was a reasonable request.

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

Vice-Chair Johnson recused himself from the following petition.

D) Petition of **Lori Sarsfield, Owner**, for property located at **56 Clinton Street**, wherein relief was needed from the Zoning Ordinance for the addition of attached one car garage which requires the following: 1) A Variance from Section 10.521 to allow a 5' right side yard where 10' is required. 2) A Variance 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 Map 158 Lot 6 and lies within the General R Residence A (GRA) District.

SPEAKING TO THE PETITION

Owner Lori Sarsfield was present and reviewed the petition. She noted that there was currently a patio and deck seven feet from the property line, so the garage addition would add another two feet, requiring the 5-ft right side yard allowance. She said the hardship was the substantial drop-off of the grading on the side yard. She reviewed the criteria and said the abutter was in support.

Chairman Rheume said the diagram showed the decks 7-1/2 feet away from the property line, but the applicant was proposing five feet, which was still a 1-1/2-ft greater encroachment. Ms. Sarsfield said it was a mistake, noting that the existing deck was 7.7 feet from the property line and went back further than what they proposed for the garage.

Chairman Rheume verified that the Board was in receipt of a letter from the abutter who was in support of the project. He opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Parrott said it was a simple and straightforward addition to the house and made a lot of sense because it would make the home more functional and useful to the owner and improve the appearance. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because it would pose no change to the essential character of the neighborhood nor threaten the public's health, safety, or welfare. He said garages were very common in that neighborhood. He said it would do substantial justice because it would be a large benefit to the applicant to have a garage added, and the location was the logical place due to the property's topography. He said granting the variances would not diminish the values of surrounding properties and would have a positive effect, if any. He said literal enforcement of the ordinance would result in unnecessary hardship because the general purposes of the ordinance were to allow people enjoyment of their home as much as possible, and there was no connection between the application of the ordinance, with respect to side yard setbacks, and the property. He said the proposed use was more than reasonable, that the garage would fit in with the neighborhood, it was only a very small variance request, and the neighbors were in favor. He said the petition passed all the tests and should be approved.

Mr. Hagaman concurred. He referred to the property's topography and the hardship criteria and said the house was aligned close to the property line, so putting the garage anywhere else on the property would be difficult to accomplish in a reasonable manner.

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

Vice-Chair Johnson resumed his voting seat, and Mr. Mulligan recused himself from the following petition and left the meeting.

E) Petition of **Matthew & Sarah Currid, Owners**, for property located at **542 State Street**, wherein relief was needed from the Zoning Ordinance to convert a single-family dwelling into a two-family with new 10' x 18' two-story deck which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,175 square feet where 7,500 square feet per dwelling is required. Said property is shown on Assessor Map 127 Lot 18 and lies within the Mixed Residential Office (MRO) District.

SPEAKING TO THE PETITION

The applicants Matt and Sarah Currid were present. Mr. Currid said they wanted to convert the single-family to two units and wanted a two-story deck as a second point of egress. He said it would be on the right side of the house to maintain all the setbacks and not impact the Historic District abutment. He reviewed the criteria and said they would be met.

Mr. Hagaman said some of the neighbors had multi-unit properties, and he asked how many units were in those buildings. Mr. Currid said the home to the left was owned by a resident but used as a rental unit for one family, the building across the street was a multi-unit apartment, and the home to the east was a mixed-use building.

Chairman Rheume verified that three parking spaces were required for the two units and that those spaces would remain. He said if the applicant was simply creating an egress from the second floor that would meet the fire code, he wouldn't have to go before the Board, but his request for the additional deck drove the need for the variance request. He asked the applicant to explain why the deck was necessary. Mr. Currid said that doing a built-in staircase to the second floor would cause significant renovation and loss of square footage within the structural unit. He said the primary entry opened into the first floor with a staircase to the second floor, so there was no separation between entry points that they could renovate into a second entry. He said an outer staircase would allow a second-story point of egress without negatively impacting the home's appearance, and there was no other way to build a second point of egress to code without extending the home in some way. Chairman Rheume said the applicant could build an exterior staircase without the deck space, which would be allowed. Mr. Stith said the Inspection Department would determine the minimum required to provide a second egress to the upper unit. Chairman Rheume said the ordinance would allow an outer stairway, whether it was enclosed or not. Vice-Chair Johnson said code would require a 5'x6' deck and the stairway down and it would have to be covered. It was further discussed.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Chairman Rheume noted that the Board received correspondence from the public pertaining to exterior upgrades and whether the building would consist of two rental apartments or have one

that was owner-occupied. Mr. Currid said it would be two rental units in the short term and an owner-occupied unit in the long term.

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

DISCUSSION OF THE BOARD

Mr. Hagaman asked if the applicant could convert the building by right if he had an external staircase on the second floor. Chairman Rheume agreed but said it would have to be approved by the Inspection Department and might have to look like a small landing for safety purposes or be covered. Mr. Stith said the building of the deck triggered the need for the variance because it exceeded the minimum requirement. Ms. Eldridge asked if the applicant wanted the deck to make the units more marketable or aesthetic, or whether it was due to the need for a second egress. She asked what the hardship was, now that the Board knew that the deck wasn't necessary for an egress. The applicant spoke up and said there would be two rental units in a community that was largely rentals, so the initial goal was to better market the property by having an outdoor seating area for both stories.

Mr. Parrott said the dimensions for the deck were different in the drawing and that the first floor also showed a different dimension. Again, the applicant said he considered a few different build concepts and ended up with a maximum build space of 10'x18'. Mr. Hagaman said the size of the deck was irrelevant because it met all the criteria. He said the issue was the lot area per dwelling unit because the stairs were inside the building. Chairman Rheume said the ordinance stated that if the applicant did nothing to the exterior other than providing a safe egress, then he was allowed to make it into two dwelling units. He said the property could be subdivided if it wasn't made bigger, and it could be made safe for someone to egress from an upper floor. He said the applicant's request to have a useful deck and a saleable deck was more than that, so the lot area per dwelling was actually better now. He said the issue was whether the variance request now met the five criteria adequately due to the saleability of the deck. It was further discussed. Chairman Rheume said he struggled with the hardship and what distinguished the property from others by splitting the building into two units and whether there was something unique about the property. He said it could set a precedent for others to come before the Board to say that they just wanted additional deck space. Ms. Eldridge said if the applicant just wanted a deck that wasn't too close to an abutter, the Board would consider it. Mr. Stith said the applicant by right could build the deck if the building was already a two-family. Vice-Chair Johnson asked whether a variance was really necessary. Mr. Stith said what was proposed did not comply with the ordinance section of converting the existing home. Mr. Lee said the applicant wanted to convert the building to a two-story home, so he needed another egress from the second floor, and that he could build a staircase and also build a deck without requiring a variance. Mr. Lee said he saw no problem with granting the variance for the deck or the staircase, noting that the Board had granted multiple variances in the past for outdoor decks just up the applicant's street.

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

Mr. Hagaman said granting the variance would not be contrary to the public interest or the spirit of the ordinance and would not alter the essential character of the neighborhood. He said it would be a multi-family dwelling in a multi-use rental area, and allowing the applicant to convert the building to a two-family dwelling with the addition of a deck was in the spirit of the ordinance. He said substantial justice would be done because there would be no loss to the public outweighed by any gain to the applicant for being able to convert the property and add the decks as presented. He said granting the variance would not diminish the values of surrounding properties, noting that he had heard no evidence that converting the property to a two-family one and adding two decks would do so, and he thought it would raise the values. He said the hardship was that the oddly-shaped property was undersized, and adding a second unit would require a variance for lot area per dwelling, whereas converting it to a two-family dwelling would be permissible by right if the egress was just a flight of stairs. He said there was no fair and substantial relationship between the general public purpose of the ordinance's provisions and the specific application of that provision to the property. He said the proposed use was a reasonable one, especially since it was considered almost by right within the ordinance already.

Mr. Lee concurred with Mr. Hagaman and had nothing to add.

Chairman Rheume said he would support the motion. He said he had doubts at first because the purist in him still thought the Board needed to hold the line, but he knew it would be unjust to say that there were two different things the applicant could do to his property within his rights but that he couldn't combine those two things.

The motion passed by unanimous vote, 6-0.

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting was adjourned at 9:54 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary