

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

**Remote Meeting via Zoom Conference Call**

**7:15 P.M.**

**MAY 19, 2020**

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

**MEMBERS EXCUSED:** John Formella

**ALSO PRESENT:** Peter Stith, Planning Department

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**I. APPROVAL OF MINUTES**

A) April 21, 2020

*It was moved, seconded, and passed by unanimous vote to **approve** the April 21, 2020 minutes as amended.*

**II. PUBLIC HEARINGS – NEW BUSINESS**

**1)** Petition of **Robert Morin III Revocable Trust, Owner**, for property located at **20 Partridge Street** wherein relief was needed from the Zoning Ordinance for installation of a condenser unit which requires the following: A Variance from Section 10.515.14 to allow a 4.5' setback where 10' is required for a mechanical system. Said property is shown on Assessor Map 101 Lot 8 and lies within the General Residence B (GRB) District.

Alternate Ms. Eldridge assumed a voting seat.

**SPEAKING TO THE PETITION**

The applicant Joyce Morin was present and reviewed the petition and the criteria, noting that the condenser would be located at the back of the house and would not be visible to the public.

Vice-Chair Johnson asked if Ms. Morin had considered siting the heat pump around the corner to the rear. Ms. Morin said it would be a problem because of how the plumbing had to be run. Mr. Hagaman asked how loud the pump would be. Ms. Morin said she didn't know but that the neighbors were fine with it because it would not face any windows. Chairman Rheaume noted that the Japanese mini-split units were generally very quiet.

## **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

## **DECISION OF THE BOARD**

*Mr. Mulligan moved to **approve** the variance as presented and advertised. Mr. Lee seconded.*

Mr. Mulligan agreed that the units were very quiet and had advantages over higher profile window set units, especially in the south end where homes were close together. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the essential character of the neighborhood would not be changed and the public's health, safety, and welfare would not be threatened. He said substantial justice would be done because the loss to the applicant if the Board were to require a full 10-ft setback would not be outweighed by any gain to the public. He said granting the variance would not diminish the values of surrounding properties because the only affected neighbor was to the right and the applicant had explained why it wouldn't conflict. He said the special condition for a hardship was that the pre-existing nonconforming home already violated the setback, and the chosen location was the optimal position on the property in terms of which side of the house to place it on, so there was no fair and substantial relationship between the purpose of the side yard setback and its application to the property. He said it was a reasonable residential use in a residential zone and met all the criteria.

Mr. Lee concurred, noting that the unit was quiet and that similar units were installed all over town.

*The motion **passed** by unanimous roll call vote, 7-0,*

**2)** Petition of **3201 Lafayette Road, LLC, Owner**, for property located on **Lafayette Road** wherein relief was needed from the Zoning Ordinance to establish a mobile home sales operation on the subject parcel which requires a Special Exception from Section 10.440 Use #11.30 where the use is only permitted by special exception. Appeal of an Administrative Decision of a Code Official in the application of Sections 10.5B83.10 and 10.1113.20 of the Ordinance. If the Appeal is not granted, the Variances necessary to grant the required relief is requested: 1) A Variance from Section 10.5B83.10 and Section 10.1113.20 to allow parking spaces to be located between a principal building and a street. Said property is shown on Assessor Map 291 Lot 8 and lies within the Gateway Neighborhood Corridor (G1) District.

Mr. Hagaman assumed a voting seat and Ms. Eldridge returned to alternate status.

## **SPEAKING TO THE PETITION**

Corey Colwell of TFMoran and Attorney John Kuznevich were present on behalf of the applicant, including the owner/applicant Glenn Gidley. Mr. Colwell reviewed the petition, noting that the applicant owned a manufactured home park and that the subject property was between the park and Lafayette Road and included an office building and parking. He said the applicant wanted to display and/or store six model homes on the property and also have storage for boats, trailers, and RVs. He said there would be five parking spaces for customers and staff, that an existing garage would be

removed to make room for the display units, and that the only additional permit required was site plan approval from the Planning Board. Attorney Kuznechik reviewed the criteria for the requested variance and special exception. He noted that parking was prohibited between the principal building and the street and that a street was either formally accepted by the City or shown on an approved subdivision plan. He said Lafayette Road did not qualify as a definition of a street and that the parking restrictions did not apply. He said an applicant had the right to rely on an ordinance as drafted and he asked the Board to reverse the decision of the code official. He explained that a special exception was normally required for a manufactured house in the G1 zone but normally meant occupied housing. He said the parcel was really for display and that the manufactured homes met the requirements of the special exception. Mr. Colwell said the requested variance was for parking in the front yard, noting that there was currently parking in the front yard between the office building and the street and there was also a paved strip representing half of that parking, so added pavement would be nominal.

The Board addressed the special exception request. Mr. Lee asked whether there was space in the back of the manufactured home park for boats and RVs. Mr. Colwell said there wasn't because much of the park was wetlands and buffer and it was completely built out. Mr. Lee asked where the sold units would be placed if the park was already built out. Mr. Gidley said that most of the homes sold were in other existing parks and that 90 percent of their business was replacement homes.

Mr. Hagaman asked whether there were other office locations around the state with a similar display that might not require a variance or special exception or appeal from a City decision. Mr. Gidley said there were not. Mr. Hagaman said that, based on the presented drawings, the parking could be arranged any number of ways to avoid a turning hazard. He said the five parking spots could be placed behind the units and that almost all the issues could be cured except for the special exception. Mr. Gidley said they initially had a proposal that showed more of the area in the wetland buffer but were told that any use in that wetland buffer would not be supported by the City staff. He also said that most of the doors to access the model homes were in the front, making it inconvenient for customers who would have to drive around the back and walk up a grade. He said he didn't want customers parking in an area where there were expensive RVs. Mr. Mulligan verified that storage for boats and RVs was a permitted use in the Gateway District. He said the special exception was just related to model home sales, and Chairman Rheaume read the relevant section in the ordinance.

Mr. Parrott said he toured the site and saw signs stating that it was a sale site already, and he asked what was different about the applicant's request and what the status of the sales office currently was. Mr. Gidley said the previous owner displayed model homes for sale on the property but that the use no longer complied with the ordinance since the zone was changed to the Gateway District. Mr. Parrott said there was no mention in the proposal of additional lighting or signage, and he cited cases where car dealers had very bright lighting displays that affected nearby homes. He asked how it would be addressed. Mr. Colwell said the display units would have a porch light over the building's entrance only and that the back storage area would have a light mounted on a pole that would not extend to the front. He also noted that it would require site plan approval.

Mr. McDonnell said the definition of a 'street' was a thoroughfare or roadway, which was either formally accepted by the City or shown on an approved subdivision plan. He said he took no issue with the applicant's position that Lafayette Road was a State road never formally accepted by the City and that it wasn't built as a subdivision road, but he didn't think that was what the definition

actually meant. He said the applicant stated that Lafayette Road wasn't a street that was constructed pursuant to an approved subdivision. He said he didn't think that's what the definition said because it said it had to be shown as an approved subdivision plan constructed to subdivision specifications. He said he would be surprised if parts of Lafayette Road were not shown on any approved subdivision plan or if it wasn't actually constructed to City specifications. He said there was some ambiguity in the definition of 'street' that the Board should look at regarding what the intent was. He said the intent of the parking ordinance was to include Lafayette Road as a street, but he was confused because no one had raised that issue.

Attorney Kuznevich said they found no evidence that the road was constructed to City subdivision specifications. He said it was constructed to State road specifications. Mr. McDonell asked what the City subdivision specifications were. Attorney Kuznevich said they were basically all the things that got approved in a typical site plan subdivision with all the details of how thick the base course was, pavement, and so on. Mr. McDonell said he thought it could possibly comply with both City and State specifications. Attorney Kuznevich said there was no evidence of that on any plan and the City Staff report did not provide any evidence or arguments that it was constructed to City subdivision plans. Mr. McDonell said he suspected that the City was trying to respond to the applicant's argument, which was that it wasn't built as a subdivision road. He said he didn't dispute it and didn't think the City did either, and thought it could have been missed. He said he saw no evidence that a) the definition was not ambiguous at all, and b) given the ambiguity, that it wasn't resolved in favor of the decision of the code official.

Mr. Hagaman said he looked through the zoning ordinance's Definition section and found intermittent uses of the words 'road', 'street', 'thruway', and so on. He said many of those words were not defined in the ordinance but were used in common layperson terms. He said the applicant quoted certain cases citing the definition, and he asked whether there were no cases whatsoever that would say with legal authority that the spirit of the ordinance or the intent could carry when there was some ambiguity as to the intent of the definition or the clarity of the definition. Attorney Kuznevich said the ambiguity would have to be on the face of the words, but if the words weren't ambiguous, then one didn't go behind them to think of some other intent. He said there would have to be a real ambiguity, which he didn't think existed as a matter of law. He said there could have been some sloppiness in the ordinance when it was drafted, and he cited Section 10.15.11: 'Unless expressly stated, the following words shall have the meaning shown in this article'. He said therefore the very requirement of the ordinance was to apply the definition strictly and not go into the common usage. Mr. Hagaman said if the word 'street' was meant to apply to every public way, whether a court could justify separating that intended meaning and set it aside as a technicality. Attorney Kuznevich agreed but said it would be a very meaningful technicality because applicants had the right to rely on what was written. He said the courts did not go beyond definitions, and he thought the City could amend or clarify that the word 'street' included Lafayette Road.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DISCUSSION AND DECISION OF THE BOARD**

Chairman Rheaume asked for comments on the special exception request. Mr. McDonell said he didn't have much concern for the special exception request because it was reasonable and would comply with the requirements. He said he didn't think there would be a change in the characteristics of the area because the project was a relatively minimal expansion of an existing or historical use.

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

Vice-Chair Johnson said he agreed with Mr. McDonell that the petition crossed off the boxes on most of the special exception requirements, including a reasonable use and low intensity. He said Route One was a good spot for the proposal because it had similar uses. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, release of toxic materials, and so on. He said he didn't think that would be more of an issue than what was presently on the site. He said it would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including neighborhoods, business districts, parking areas, odors, smoke, pollutants, unsightly equipment storage, and so on. He said it was an eclectic group of uses in that neighborhood that included a residential portion on Route One but also ten different businesses. He said granting the special exception would create no odor, smoke, gas, dust, and so on because those weren't really issues. He said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic, noting that he didn't see the project greatly increasing the level of traffic and that the traffic lights caused people to drive at a slow pace and be aware of the in-and-out curb cuts. He said there would be no excessive demand on municipal services and no significant increase of stormwater runoff onto adjacent properties, noting that there was a decent portion of the area covered in asphalt and that stormwater drainage would be addressed by the Planning Board and the Technical Advisory Committee (TAC). For those reasons, he said the special exception should be granted.

Mr. Hagaman concurred and had nothing to add.

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

Chairman Rheaume then addressed the appeal of the decision by the code official that the parking between the structures and the road was subject to the ordinance in terms of whether Lafayette Road was in fact a street.

Mr. Mulligan said that a few good points were made but that he disagreed with Mr. McDonell in that he couldn't look at the definition of 'street' and determine on its face that it was ambiguous. He said a better argument might be that if one were to literally apply it, even though it was unambiguous, it would lead to an absurd result. He asked what it did to setbacks on Lafayette Road and various design elements required within the Gateway District if the Board didn't think of Lafayette Road as a street under the ordinance's definition. He noted that there were specific references in the Gateway District portion of the ordinance to Lafayette Road as a 'road' and not a 'street', so that suggested to him that there was some recognition that Lafayette Road was separate from the 'street' garden variety. He said if someone looked at the definition of 'front yard', where setback requirements came from, there was a way to determine front yard dimensions without access to a street on a plan but with reference to a position 25 feet from and parallel to the center line of a travelled way, so there was an alternative to 'street' for determining what front yard setbacks were and other design

requirements were in the Gateway Zone. He said he still thought that it wasn't the intended result but didn't think it was an absurd result because it was argued that Lafayette Road was a different animal than a garden variety street. He said he was inclined to support the administrative appeal to overturn the Planning Department's decision.

Chairman Rheume said the Board received a late input from the City attorneys and that they also used the term 'absurd', so he thought the Board could wrestle with the concept of what the threshold for 'absurd' was. Mr. Hagaman asked whether an absurd result not be the simple fact that any property on Lafayette Road could put parking between the primary structure and the road, which would defeat the spirit and purpose of that requirement. Mr. Mulligan said that was what the ordinance should state if that's what it required. He said it didn't specifically invalidate all of the other requirements as to setbacks and other design elements, so he didn't think so. Chairman Rheume agreed that in some cases, some of those requirements were specific to the term 'Lafayette Road', as Mr. Mulligan had pointed out. In response to Mr. Hagaman's question of whether he thought there was no ambiguity in the actual definition of 'street' in regard to subdivision plans, Mr. Mulligan said he didn't agree with the idea that a State road built to State specifications was also built to City specifications because the two may overlap, saying it was a pretty serious stretch.

Mr. Parrott said the word 'street' was a pretty generic term and not some new scientific thing that had a precise meaning that was unambiguous. He said his neighborhood had houses sited on 'roads, places, streets, and even a park', so in reading the ordinance, the intent of the definition was clear when it used the word 'street'; otherwise, one could get to the silly point where any time something was related to a street, one would have to say 'street' to include six different names. He said US Route One Bypass could also be considered to not be a street. He said the intent of the ordinance was to call roads and streets and places, etc. and they were all considered to be public or private paved areas on which a property was sited. He said he didn't think there was any rule that said common sense wasn't allowed, and there was nothing in the ordinance that said someone had to take something and strain it to get a legalistic definition to understand it. He said the Planning Department's interpretation made the most common sense to him. Mr. Hagaman said it was ironic that the definition of a manufactured housing park in the ordinance used the word 'road'. He asked if there was a process under Subsection A of the definition formally accepting the thruway where that occurred or if there were actions taken by the City to deem that it was formally accepted, like plowing that might fall under that aspect of the definition. Mr. Stith said there was and that it had to be built to City standards to be accepted into the City's system. Chairman Rheume said that the mere fact that the City plowed something wasn't sufficient to indicate that it was actually a street.

Mr. McDonell said there was a process by which someone wanting to build a street could dedicate it, and the City could accept it or not. He said he agreed with Mr. Parrott that the clear intent of the parking ordinance was to include Lafayette Road as a street, but he thought the applicant was right in stating that one had to look at a defined term to see if it was ambiguous, which was why he thought Lafayette Road was not subject to parking requirements because it wasn't a street. He said he took issue with the definition of 'street', noting that it had to be shown on an approved subdivision plan constructed to City subdivision specifications. He said that, just because there might be overlap between State road construction specifications and City road subdivision specifications, it was a stretch to say that if the intent was to comply with State requirements and one happened to comply with City requirements, that should be sufficient. He said the City subdivision specifications provided some minimal level that a roadway must comply with, meaning a minimal level of road width or pavement depth and so on. He said if someone built a driveway, it was probably not a street

under that definition because it wouldn't meet City subdivision standards. He said if the State built a road that would otherwise comply with City subdivision specifications, he thought it was either clearly within that part B of the definition 'street' or there was enough ambiguity to raise the issue as to what the intent was. He said there may be instances in the ordinance where the word 'street' was not intended to include Lafayette Road, but in the case of the parking requirement, it was.

Chairman Rheaume said he was torn as well. He said the ordinance defined the term 'street' explicitly and it would have been well served by adding the term 'includes but is not limited to the following'. He said the Legal Department added the concept of absurdity. He asked whether the consideration of Lafayette Road as not being a street resulted in something absurd, and he thought that was a high bar to meet. He said he couldn't make the argument that the end result would be far divorced from reality, even though he thought it was. He said it was common sense that the ordinance intended for Lafayette Road to be treated as a street, but there was a bit too much effort to be very specific in one area, i.e. the definition of 'street', without recognizing the potential fallout or consequences in recognizing the more common sense or traditional definition of the word. He said the applicant raised a good point about the ordinance in stating that it was a weakness that could be corrected, and if the Board decided that the applicant's concept had merit, then the Board would just have to deal with follow-up applications by anyone else.

The Board discussed whether the application should be postponed until the City corrected the error. Chairman Rheaume said unless there was additional information or a legal opinion that the Board needed, it behooved them to move the application along one way or another. He said the Board could decide that it was an error or they could uphold the Planning Department's decision.

## **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the appeal and overturn the decision of the administrative official. Mr. Hagaman seconded.*

Mr. Mulligan said he would reference his earlier comments. He said it was an unintended consequence of the drafting of the ordinance but that the Board saw a lot of unintended consequences with their ordinances. Mr. Hagaman concurred. He said that seconding the motion pained him a bit because it felt like a loophole in that it was an oversight of how that particular term was defined and then used, but he thought the Board's deliberation was more with the frustration with how it was defined and then used, and not with ambiguity surrounding the definition.

Chairman Rheaume said he would approve the appeal because he thought the common sense approach was that Lafayette Road was a street, but the ordinance painted itself into a corner. He said the applicant's representative was clever enough to have thoroughly read the ordinance in detail to pick up on that subtlety that no prior applicant had brought up. He said that, while he wasn't in favor of the necessary consequences that came from it, he didn't think the end result was something that would end up in the realm of the absurd. He said the Board would have to either say the definition was ambiguous or absurd, but that it seemed straightforward to him. He didn't think the resulting parking would be noticeable because it would look like parking for residences.

*The motion **passed** by a vote of 5-2, with Mr. McDonell and Mr. Parrott voting in opposition.*

Chairman Rheaume said there was no need to take up the request for a variance since it no longer applied, based on the Board's decision to grant the appeal.

**3)** Petition of **Todd & Jan Peters, Owners**, for property located at **379 New Castle Avenue** wherein relief was needed from the Zoning Ordinance for a partial demolition and reconstruction of an existing residence and porch which requires the following: 1) A Variance from Section 10.521 to allow: a) a 6' right side yard where 10' is required; b) 22% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 207 Lot 4 and lies within the Single Residence B (SRB) District.

Mr. Hagaman returned to alternate status and Ms. Eldridge assumed a voting seat.

### **SPEAKING TO THE PETITION**

The architect Anne Whitney was present on behalf of the applicant and reviewed the petition. She noted that the property was within a 50-ft shore land buffer so they needed approval to keep the same footprint. She said both neighbors were in support. She reviewed the criteria and set it would be met.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Mr. Stith noted that the Board received a comment in favor of the petition. No one else was present to speak to the petition, so Chairman Rheaume closed the public hearing.

### **DECISION OF THE BOARD**

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

Mr. Parrott said there was small relief requested and a fair amount of construction, but that it was mostly upward. He said there was practically no change in the footprint and that it would only be 10 percent over the required maximum. He noted that the property was in dire need of attention and would benefit the owner and the neighbors. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance because the property's appearance would be improved and the house would be brought up to code, which would not affect the public's health, safety, or welfare. He said substantial justice would be done because the applicant would have a code-compliant house with better operating systems and a better appearance that would be a benefit to the owner, neighbors, and the public. He said granting the variances would not diminish the values of surrounding properties because the improvements would only benefit them. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the hardship was that the house was large and the lot was small, and the restrictions on what one could do were pretty clear because the property was so close to the water. He said the requested relief was minimal and that the petition easily met the criteria and should be approved.

Mr. Lee concurred with Mr. Parrott.

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



At this time, Chairman Rheaume noted that there was a request to postpone Case 7, 138 Maplewood Avenue. He asked for a motion to take the case out of order. Ms. Eldridge assumed a voting seat.

*Mr. Lee moved to take the case out of order, and Mr. Mulligan seconded. The motion **passed**, 7-0.*

*Mr. Lee moved to **grant** the request to postpone, and Ms. Eldridge seconded.*

Mr. Lee said that the Board historically always granted first requests to postpone, and Ms. Eldridge agreed.

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

**4)** Petition of **AER RE, LLC, Owner**, for property located at **185 Cottage Street** wherein relief was needed from the Zoning Ordinance to allow a business office use which requires the following: A Variance from Section 10.440 Use #5.20 to allow a business office use where the use is not permitted. Said property is shown on Assessor Map 174 Lot 14 and lies within the General Residence A (GRA) District.

Vice-Chair Johnson recused himself from the petition, and both alternates took voting seats.

#### **SPEAKING TO THE PETITION**

Attorney Derek Durbin representing the applicant was present. He said the property was an island property in the zoning context and that it was approved for medical use in 2018 and had two residential uses at the time. He said they currently had a dental office on the second floor and wanted a business office use for the first floor. He reviewed the criteria and said they would be met.

Ms. Eldridge asked how many tenants the applicant wanted, noting that it might affect the usage of the lot. Attorney Durbin said it was just one use, in terms of the ordinance, and that the owner wanted a particular tenant. He said the space had not been built out yet and had not been advertised for multiple tenants. Chairman Rheaume asked whether the entrances and exits for multiple businesses on the first floor would satisfy egress requirements. Attorney Durbin said they would because the building was built out for just one tenant on the ground floor.

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

Mr. McDonell said granting the variance would not be contrary to the public interest or to the spirit of the ordinance, noting that he saw no reason why the Board should not grant it because it would pose no injury to public rights or harm to the public by allowing a business use in a site like that. He

said the values of surrounding properties would not be diminished. He said the Board had heard no testimony that they would be, and the location of the property was sort of an island when it came to zoning and had no property abutting it that was in the GRA zone. He said an argument could be made that if a house was next door its value could be diminished, but that wasn't the issue. He said literal enforcement of the ordinance would result in an unnecessary hardship due to the property's special conditions of being an island on the corner and standing alone, so there was no fair and substantial relationship between the purpose of the ordinance that restricted the uses of the GRA zone and the specific application of that provision to the property. He said the proposed use was a reasonable one, noting that the Board previously found the medical office use reasonable, and that the business office use was reasonable for the same reasons.

Mr. Mulligan concurred and had nothing to add.

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

**5)** Petition of **GIRI Dover, LLC, Owner**, for property located at **99 Durgin Lane** wherein relief was needed from the Zoning Ordinance for installation of concealed wireless communication facilities which requires the following: A Special Exception from Section 10.923.30 to allow the installation of concealed wireless communication facilities where the use is permitted by Special Exception. Said property is shown on Assessor Map 239 Lot 15 and lies within the Gateway Neighborhood Corridor (G1) District.

Vice-Chair Johnson returned to his seat. Mr. Hagaman retained his voting seat and Ms. Eldridge returned to alternate status.

### **SPEAKING TO THE PETITION**

The Verizon representative Ben Skillin was present on behalf of the applicant. He stated that Verizon wanted to co-locate six panel antennas and three remove radio heads within the parapet walls of an existing Hampton Inn. He reviewed the petition, noting that there would be no ground disturbance and that the equipment would be concealed from view using material matching the existing parapet. He said the need was to address a gap in service to targeted areas along Route 16, Woodbury Avenue, and surrounding businesses and that Verizon would monitor and maintain the equipment. He reviewed the special exception criteria and said they would be met.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

*Vice-Chair Johnson moved to **grant** the special exception, and Mr. Mulligan seconded.*

Vice-Chair Johnson said it was a small request and wouldn't be seen from a public way. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, release of toxic materials and so on because there was nothing driving any concerns about fire, and the equipment would be on the exterior of the building. He said there

would be no detriment to property values in the vicinity or change in the character of the neighborhood because it wouldn't been seen and operationally wouldn't have a lot of noise or anything airborne or bright lights, and so on. He said the traffic safety hazard was a non-issue. He said granting the special exception would pose no excessive demand on municipal services because it would have the opposite effect of boosting a municipal service or something similar to it. He said there would be no increase of stormwater runoff. He concluded that only a few of the criteria were really affected and that the others were only minimally affected.

Mr. Mulligan concurred and added that it was a very passive use that wouldn't present itself to the public or neighboring properties unless they already knew it was there. He said he didn't see any detriment to property values or creation of a traffic safety hazard and agreed that it would be a decrease on demand for municipal services. He said the project met all the criteria.

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

**6)** Petition of **Andrew S. Bridges, Owner**, for property located at **10 Fairview Drive** wherein relief was needed from the Zoning Ordinance for construction of a 10 x 12 shed which requires the following: A Variance from Section 10.573.20 to allow a 3' rear and a 3' side yard where 8.5' is required for both. Said property is shown on Assessor Map 219 Lot 18 and lies within the Single Residence B (SRB) District.

Vice-Chair Johnson recused himself from the petition, and both alternates took voting seats.

### **SPEAKING TO THE PETITION**

The applicant Andrew Bridges was present and reviewed the petition, noting that there was a big slope in the middle of the backyard and that he didn't want to use the level portion for the shed.

Mr. McDonell asked if the applicant's shed would line up well with the two neighboring sheds. Mr. Bridges agreed and said his shed was bigger than the one at 12 Fairview Drive and slightly bigger than the one directly behind his house.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

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

Mr. Parrott said it was a simple and straightforward petition and was in harmony with the rest of the neighborhood's sheds. He said granting the variance would pose no conflict with the purposes of the ordinance and no threat to the public's health, safety, or welfare because it was in character with the rest of the neighborhood. He said it would benefit the applicant because a shed was a logical solution to maintain yard and garden equipment. He said granting the variance would not diminish the values of surrounding properties because it would have no effect on the two abutting properties that had similar structures in similar locations on their lots and would not stand out as a detriment to other

properties in the neighborhood. He said the hardship was the grade of the property and that the chosen location was the most logical place to put a small shed. He said it would be tucked in the place with the least effect on the property and would not impinge on the yard, yet it would be offset three feet to allow access to its exterior for maintenance without affecting someone else's property. He said the proposal satisfied all the criteria and should be approved.

Mr. Lee concurred and had nothing to add.

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

**7) REQUEST TO POSTPONE** the Petition of the **Donna Pantelakos Revocable Trust, Owner** for property located at **138 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance to create a new dwelling unit by constructing a second floor addition over an existing garage which requires the following; 1) A Variance from Section 10.521 to allow: a) a lot area per dwelling unit of 2,616 where 3,000 is required; and b) a 1' right side yard where 5' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 124 Lot 6 and lies within the Character District 4-L1 (CD4-L1) District.

*It was moved, seconded, and passed by unanimous vote (7-0) to **postpone** the petition to a future meeting.*

### **III. OTHER BUSINESS**

There was no other business.

### **IV. ADJOURNMENT**

The meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary