

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

Remote Meeting Via Zoom Conference Call

7:00 P.M.

JUNE 16, 2020

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

MEMBERS EXCUSED: Arthur Parrott, Peter McDonell

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheume noted that two petitions were withdrawn, 268 Dennett Street and 77 Meredith Way. He stated that alternates Ms. Eldridge and Mr. Hagaman would vote on all petitions.

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of May 19, 2020 and May 26, 2020.

*It was moved, seconded, and passed by unanimous roll call vote (7-0) to **approve** the May 19, 2020 minutes as amended.*

*It was moved, seconded, and passed by unanimous roll call vote (7-0) to **approve** the May 26, 2020 minutes as presented.*

II. PUBLIC HEARINGS – OLD BUSINESS

1) Petition of the **Donna Pantelakos Revocable Trust, Owner** for property located at **138 Maplewood Avenue** wherein relief was 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.

SPEAKING TO THE PETITION

Project architect Anne Whitney representing the applicant was present and reviewed the petition. She said the neighbor would allow a no-build 5-ft easement for maintenance on the right side of the structure and that the six parking spaces would remain.

Mr. Mulligan asked where the parking spaces would be. Ms. Whitney said the garage would have two spaces and four spaces would be to the left of the garage. Chairman Rheaume asked what the petition's status was with the Historic District Commission (HDC). Ms. Whitney said they had a positive work section and that there were only two minor issues, the arched openings in the back and the need for better site photos. Chairman Rheaume asked if Ms. Whitney had looked at the adjoining properties regarding their lot-area-per-dwelling units. Ms. Whitney said most of the other units were commercial condominiums and not dwelling units.

Chairman Rheaume 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 petition as presented and advertised, and Mr. Lee seconded.*

Mr. Mulligan said the side yard setback variance was perfunctory because it was just a vertical expansion off the existing footprint. He said the Board was receptive to that type of request, especially in the applicant's case where he had worked with the most affected abutter to acquire some easement rights so that the light and air wouldn't be compromised more than they already were. He said the lot-area-per-dwelling unit variance request required a bit more relief and that the most affected party was the building to the south that shared the driveway and accessway, but it was a commercial office/condo complex that wouldn't conflict between the residential and commercial uses. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the essential characteristics of the neighborhood would not be altered by adding another dwelling unit in the proposed location, nor would it threaten the public's health, safety, or welfare. He said substantial justice would be done because the loss to the applicant if the variances were denied would not be outweighed by any gain to the public if the Board required strict compliance with the ordinance, and there would still be a 1-ft side yard setback and a dense urban environment. He said granting the variances would not diminish the value of surrounding properties, noting that the petition had to be vetted by the HDC, who would protect the public in terms of aesthetics, and that the structure was tastefully designed. He said the hardship was caused by the property's special conditions, including that there was already an extensive built environment that imposed on the side yard setback and that it wouldn't make sense to make the applicant move the existing garage further away from the side line. He said the property was also burdened by its proximity to the North Mill Pond and the commercial condominium that shared the driveway and accessway. He said those were all special conditions that applied to the applicant's property that might not apply to others in the vicinity and that there was no fair and substantial relationship between the setback

and lot-area-per-dwelling requirements and their application to the property. He said the petition met all the criteria and should be approved.

Mr. Lee concurred with Mr. Mulligan.

Chairman Rheume said the property's narrow setback would normally be a concern but agreed that the applicant did a good job in getting the relief on the adjoining property, which would also provide for maintenance, and that it was an open area on the adjoining property with some parking, so the light and air considerations were minimal to none.

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

2) WITHDRAWN Petition of **Michael Petrin, Owner**, for property located at **268 Dennett Street** wherein relief is needed from the Zoning Ordinance to demolish the right side portion of house and reconstruct new addition which requires the following: 1) A Variance from Section 10.521 to allow a 0' right side yard where 10' 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 143 Lot 13-1 and lies within the General Residence A (GRA) District.

The petition was withdrawn by the applicant.

III. PUBLIC HEARINGS – NEW BUSINESS

1) Petition of **Joseph & Jessica Denuzzio, Owners**, for property located at **105 Thornton Street** wherein relief was needed from the Zoning Ordinance to demolish existing greenhouse and construct new shed addition which requires the following: 1) A Variance from Section 10.521 to allow a) a 2' front yard where 15' is required; and b) 49% building coverage where 25% 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 159 Lot 18 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant and reviewed the petition. He said his client wanted to replace the greenhouse with a shed of the same dimensions. He noted that the building coverage was actually 33% and not 49% as advertised. He reviewed the criteria, emphasizing that the property was a corner lot and the home was set back one foot from the front boundary line, so the greenhouse had a greater setback than the home.

In response to Vice-Chair Johnson's question, Attorney Durbin said Thornton Street was wide, like many surrounding streets, and that the property line was 18 feet from the street edge. 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. Formella moved to **grant** the variance for the petition, with the following stipulation:*

- *That the lot coverage shall be limited to a maximum of 33% building coverage instead of the 49% that was advertised.*

Ms. Eldridge seconded.

Mr. Formella said nothing had really changed, just the construction of a new shed in the same footprint as the existing greenhouse. He said granting the variances would not be contrary to the public spirit and would observe the spirit of the ordinance because it would not alter the essential characteristics of the neighborhood. He said it would become a bit more conforming but would be the same nonconformance that existed before, and it wouldn't threaten the public's health, safety, or welfare and might be safer because it would be more structurally sound than the greenhouse. He said granting the variances would do substantial justice, noting that he didn't see any gain to the public for denying the variances and that it would be a loss to the applicant. He said the values of surrounding properties would not be diminished and most likely would rise because the property would be nicer. He said literal enforcement of the ordinance would result in unnecessary hardship because the unique conditions of the property were an existing structure that had the same nonconformance as the one replacing it, and the property was on a corner lot, which was always unique because the purpose of the setback requirement was to maintain open air, light, and space, which corner lots were better for. He said there was no fair and substantial relationship between the public purposes of the requirements and their application to the property because nothing would really change. He said it was a permitted use and a smoother use than the greenhouse because it would just be a storage house that would be better melded into the home. For all those reasons, he said the petition should be approved.

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

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

2) Petition of **Timothy Whitaker, Owner**, for property located at **1163 Sagamore Avenue, Unit 20** wherein relief was needed from the Zoning Ordinance for construction of a 10' x 24' rear deck which requires the following: A Variance from Section 10.521 to allow a 7.5' rear yard where 15' is required. Said property is shown on Assessor Map 224 Lot 17-2 and lies within the Mixed Residential Office (MRO) District.

NOTE: The applicant wasn't present at first, so the Board voted to take the next petition out of order to give the applicant more time to appear. They returned to the petition later on.

It was moved, seconded, and passed by unanimous roll call vote (7-0) to take Petition 3, 0 Falkland Way, out order so that the Board could address it.

SPEAKING TO THE PETITION

The applicant Tim Whitaker was present and reviewed the petition. He said the deck would conform to the home and that the condominium association and adjacent neighbors were in support. He reviewed the criteria and said they would be met.

Mr. Mulligan asked if the HVAC condensers were all standalone units. Mr. Whitaker said they were. In response to further questions, he said there were at least six other units in the development that had 10-ft decks off the rear of their main structures and that there would still be a lawn area between the woods and his proposed deck. In response to Vice-Chair Johnson's questions, Mr. Whitaker said there currently were no doors leading out to the back but that he wanted an interior door leading to the deck and that the first-floor height started at four feet off the ground. Mr. Hagaman asked whether the building furthest away from the applicant's unit had a deck somewhere else and if so, whether the applicant could do something similar. Mr. Whitaker said the owner of that unit only had a balcony off the third floor. In response to further questions, he said the deck's length would stop before the HVAC units and there would be 12 feet on each side of the house after the deck was built, so there would be no maintenance issues.

Chairman Rheume said it was an unusual situation of 10 single-family homes in a condominium complex, resulting in the applicant's home being built up against the rear setback. He noted that the developer had said the units would be in full compliance, but now the homeowners were requesting variances. Mr. Whitaker said he wanted to use ten feet of the rear 17 feet for a deck. Chairman Rheume asked if a 7-1/2 ft. deck would be okay so that it would fit between the house and the setback. Mr. Whitaker said he wouldn't build the deck if that was required.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Ms. Eldridge said it was a reasonable request and thought ten feet was a good size for a deck because the applicant had a very narrow backyard. She said the deck would affect no one else. Mr. Formella said if there were no woods in the back or the house was being expanded, he wouldn't support the petition, but because the applicant's yard had less room than the other units did and because the developer and not the applicant built it that way, he said he could support it. Mr. Lee said the applicant's house was burdened by having the smallest backyard and he didn't see the concern about having a 10-ft deck with nothing but woods in the back.

Chairman Rheaume said a developer would come before the Board and state that he could build a great thing, but then the owner who bought the structure later realized that simple quality-of-life items could be improved. He said the applicant had good reasons to meet the criteria, and he thought it was a fine opportunity to grant a variance. However, he said that just because the yard was narrow wasn't a great criterion to deserve a variance. Vice-Chair Johnson agreed and thought it was a good example of the Board and the applicant having to clean up the developer's mess. He said it was a challenge to find a hardship but that he would support the petition. Mr. Hagaman said the Board should be careful in characterizing the developer because the back of the house didn't seem designed to have a deck.

DECISION OF THE BOARD

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

Mr. Lee said the applicant unfortunately ended up with the smallest backyard. He said granting the variance would not be contrary to the public interest or the spirit of the ordinance, and the proposed use would not alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said it would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the public, and it would not diminish the value of surrounding properties. He said the hardship was due to the way the lot was laid out, which prevented the applicant from having outdoor space and fully enjoying his property.

Vice-Chair Johnson concurred. He said the hardship was the developer's overall plan for the condo association's build-out and the narrow lot, and that the slope of the back of the house was enough to preclude a patio, which would render it unusable without a deck. He said the applicant was asking for 50 percent of the requirement, but the fact that it was a rear lot and faced a vacant wooded lot in perpetuity overrode the dimensional discrepancies

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

3) Petition of Raleigh Way Holding Group, LLC, Owner, for property located at 0 Falkland Way (off Albacore and Saratoga Way) wherein relief was needed from the Zoning Ordinance to merge two lots and demo existing structures in order to construct a 4 unit multi family dwelling which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,736 square feet where 5,000 square feet is the minimum required; and 2) A Special Exception from Section 10.440 Use #1.51 to allow 4 dwelling units where the use is allowed by a special exception. Said property is shown on Assessor Map 212 Lot 112 and lies within the General Residence B (GRB) District.

SPEAKING TO THE PETITION

Attorney Derek Durbin representing the applicant was present, along with the project designer Brendan McNamara and the project engineer Alex Ross. Attorney Durbin reviewed the petition, noting that the applicant wanted to merge Lots 112 and 113 to develop a four-unit residential

building and would also have four affordable housing units. Mr. McNamara said the gambrel roof was in keeping with the English Village concept of the Atlantic Heights neighborhood and would fit in like a converted barn or large carriage house. He said each unit would be 2,100 square feet and would be shingles instead of brick. Attorney Durbin reviewed the variance criteria, noting that it included a 2005 decision by the Board to approve the 9 Falkland Place property that he thought was relevant and similar to the application. He reviewed the special exception criteria. Mr. Ross briefly described the site's stormwater management plan and said they would have a full Technical Advisory Committee (TAC) review.

Vice-Chair Johnson asked if the units would be apartments or condominiums, noting that he hadn't seen anything else in Portsmouth that was the size of the proposed units and couldn't see how the applicant could put it on the market at a low affordable housing rate. Attorney Durbin said the units were condominiums. He said the surrounding property values dictated the ceiling for individual homes to be sold for in every part of the city, and that some of the Atlantic Heights properties were treated as starter homes, which was a driving force behind the build-out size.

Mr. Hagaman asked if the applicant would commit to listing the condos lower than market value so that they would be affordable, and whether the applicant had considered smaller-sized dwelling units within the same footprint to be more affordable and more similar to homes in Atlantic Heights. Attorney Durbin said affordable housing had been loosely defined and was a term that got thrown out a lot to make projects more salable to the Board and other people. He said he couldn't just focus on Atlantic Heights but looked at the city as a whole as to what was or wasn't affordable. He said 2,100 square feet was probably maxing out the evaluation range of Atlantic Heights, but the idea was not to sell the units at a percentage below what Atlantic Heights homes were selling for but to sell them below what other areas in Portsmouth were selling for. He said they had not considered building out more units because the primary consideration was to create something that was consistent with the existing density. He said the proposed building was less dense than the majority of properties in Atlantic Heights but more consistent. Mr. McNamara said the term 'affordable housing' should really be 'efficient construction', meaning finding the balance between efficient and affordable.

Chairman Rheume asked the basis for stating that the lots were involuntarily merged. Attorney Durbin said each of the parcels was identified from the property descriptions in the deeds. Chairman Rheume noted that the applicant said they had considered doing all the lots individually but would still have to go before the Board and that the lots would still be undersized due to no street frontage for most of the lots. Attorney Durbin said the present proposal was the better option for the neighborhood. Chairman Rheume said Albacore Way had a lot of housing that wasn't dissimilar from what the applicant was seeking. Mr. McNamara said those properties were done in 2008 and were in the far reaches of the original development. He said it was a different development that also had single-family houses on much larger lots. Chairman Rheume said the condominiums were pretty close physically to the proposed development and had the same number of units and overall size. Mr. McNamara said they had a positive context to his client's development in terms of size but had an unattractive design. Chairman Rheume said the gambrel roof had a bowed appearance. Mr. McNamara said that doing a swale roof reduced the sense of overall mass and lowered the possibility of allowing the windows to be larger on that side.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one was present to speak in favor.

SPEAKING IN OPPOSITON TO THE PETITION

Chairman Rheume said the Board received two emails in opposition.

Alan Davidson of 24 Raleigh Way said the building was not affordable housing because it was a 2,100-sf 3-story building in Atlantic Heights where there were no other 3-story buildings. He thought the shingled exterior would be inconsistent with the neighborhood's brick homes.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. McNamara said the 2005 development on Falkland Way was a 3-story structure, and the third floor of the proposed development was within the gambrel's attic, so there was limited headroom on that floor. He said the shingles would make the building look less institutional.

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

DISCUSSION OF THE BOARD

Mr. Mulligan said he wasn't convinced that the 2005 Falkland Place petition was relevant or much of a comparison because the development was built in the shadow of the highway and didn't have the kind of neighborhood surrounding it that the applicant's property did. He said that otherwise, the density seemed to be pretty close if one looked at the lot and compared it with the character of many of the lots in proximity, and was probably less dense. He pointed out that the original existing home on Raleigh Way was a duplex on a lot less than half the size of the applicant's lot and that there were similar lots, so the lot-area-per-dwelling was consistent. He said the proposed development was aggressive in terms of how big the units were but otherwise met all the dimensional requirements. Mr. Formella said he didn't see the development as affordable housing because the tradeoff would be a request for relief when it came to the number of dwelling units in exchange for making them smaller or affordable. He said he agreed with Mr. Mulligan, though, that it would be nice to see an attempt at affordable housing, but he thought it was a uniquely large lot and the applicant had tried to make the units look like the other buildings, even though they were big and didn't quite fit in. He said the applicant met all the dimensional requirements and it was a big enough lot that they had a good case for some relief from the lot-area-per-dwelling-unit limitations. Mr. Hagaman said he didn't consider the petition a pitch for affordable housing but it didn't mean that the application wasn't worthy of the variance and special exception and that he was inclined to support it.

Chairman Rheume said the neighborhood probably had affordable housing at one time because it was constructed to support the shipbuilding firm back then. He said he didn't think the units

were super affordable but were a bit less valuable than single-family homes. He said the neighborhood context was supportive, even though Albacore Way had larger lots. He said the lot-area-per-dwelling unit was the key and it was a bit higher than anywhere else but wouldn't feel out of place. He said the units weren't tiny but the size of the building was driven by the setbacks and not the total size of the units.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the special exception and the variance for the petition as presented and advertised, and Mr. Hagaman seconded.*

Mr. Mulligan addressed the special exception criteria and said a four-unit residential dwelling was permitted by special exception in the zone. He said granting it would not pose a hazard to the public or adjacent properties on account of potential fire, explosion, release of toxic materials, and so on and would pose no detriment to property values in the vicinity or change to the essential characteristics of the area on account of the location or scale of buildings or other structures, parking areas, accessways, odor, smoke, dust, storage of equipment, and so on. He said the most relevant things were the location and scale of the buildings and other structures, and as the Board had discussed, what was proposed was similar in density to much if not most of the greater Atlantic Heights neighborhood in terms of lot area per dwelling. He said the building's size and massing were similar to at least some of the other buildings, like the nearby condo development on Albacore Way or some of the other larger buildings in Atlantic Heights. He said granting the special exception would pose no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity because the amount of residential density for the lot given its size was consistent with Atlantic Heights. He said there would be no excessive demand on municipal services, noting that they wouldn't be impacted significantly at all. He said the project had to go through site review, so all the municipal departments would weigh in. He said granting the special exception would pose no significant increase of stormwater runoff onto adjacent properties or streets, noting that the project engineer provided preliminary assurance that all stormwater could be managed and TAC would take care of the rest. He said the proposal easily met all the criteria for a special exception.

Mr. Mulligan said a variance was requested for the lot-area-per-dwelling unit of 3,700 square feet where 5,000 square feet was the minimum required, so given the essential character of the neighborhood, which was dense, he said he didn't feel that there would be any material alteration to the character of the neighborhood or compromise to the public's health, safety, and welfare. He said that granting the variance would not be contrary to the spirit of the ordinance for the same reason. Substantial justice would be done because, given the existing density of the surrounding neighborhood, he could not see how there would be any gain to the public that would outweigh the loss to the applicant if the Board required strict compliance to the ordinance. He said granting the variance would not diminish the value of surrounding properties, noting that they would probably be boosted by brand new code-compliant construction, and the large condo units would hopefully attract affluent buyers who would pay additional value for the property. He said literal enforcement of the ordinance would cause unnecessary hardship because the special conditions of the property was its location on a corner lot and the conglomeration of

several lots that made it larger than the typical lot in Atlantic Heights, which were conditions that distinguished the property from others in the area. He said there was no fair and substantial relationship between the purpose of the lot-area-per-dwelling ordinance and its application to the property, and that the resulting density would be very similar and consistent with what was already on a large portion of Atlantic Heights. He said it was a reasonable use, a residential use in a residential zone, and met all the criteria for both the special exception and variance.

Mr. Hagaman concurred, adding that dropping from four units to three would not materially change or impact the project or the appearance of the building.

The motion passed by a vote of 6-1, with Vice-Chair Johnson voting in opposition.

4) Petition of RKW Investment Properties, LLC, Owner, for property located at 115 Heritage Avenue wherein relief was needed from the Zoning Ordinance to allow a place of assembly which requires the following: 1) A Variance from Section 10.440 Use #3.10 to allow a place of assembly where the use is not permitted in the district. Said property is shown on Assessor Map 285 Lot 5-1 and lies within the Industrial (I) District.

SPEAKING TO THE PETITION

Attorney Kevin Baum was present on behalf of the applicant to review the petition. Also present was Major Reed of the Salvation Army. Attorney Baum explained that they were seeking a temporary home for the Salvation Army and that the use would be the same as the former long-term use on Middle Street. He said they would use the Salvation Army food truck for the daily meals due to the lack of a kitchen. He said the property was buffered from residential neighborhoods and was consistent with other churches in the area.

Chairman Rheume said the applicant's previous application had made a lot of sense because it was in a commercial district and only for a special exception, but the applicant was requesting a variance on a property further away from Lafayette Road. He said Heritage Avenue wasn't conducive to pedestrian traffic. Attorney Baum said the variance request was caused by the difficulty of finding a space that would allow the Salvation Army to provide its full services, adding that the Salvation Army had several vans and volunteers to transport patrons. Chairman Rheume said the Salvation Army's needs were more intense than other churches because a greater number of people showed up. Regarding compatibility with the industrial district, he said a typical food truck for an industrial company was for the employees, but patrons would go to the Salvation Army's site to take advantage of the free meal services and the other things going on, like the free educational classes. He said the Lafayette Road property had lent itself better to those activities. Attorney Baum said the food truck would be a lighter use and that the number of congregants was less than most churches. He said the service would be mostly on weekends, when the area was underutilized. Chairman Rheume said if the Board granted the variance, it would be in perpetuity for the property and would allow the same use to a future owner. Attorney Baum said he hoped it would only be for six to twelve months.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Mulligan said Chairman Rheume raised some good points about whether or not the location and environment were really suitable for that type of use, and he agreed that the major concern was the proximity to Lafayette Road and whether Heritage Avenue was suitable for pedestrians. He said he would be in favor of approving the variance, however, if a stipulation were made to limit the use to the square footage that was presented and advertised. He also recommended that the Board place a time limit on the variance so that the applicant could be given a test run for a year or two. He thought it was appropriate to grant the variance request with the two stipulations. Mr. Hagaman agreed. He said he had been less concerned about safety and welfare and characteristics of the Lafayette Road neighborhood due to the proximity to public transportation and the fact that the Salvation Army's use fit in with other businesses and uses in the area, but he noted that there was no other place for the Salvation Army to go. Chairman Rheume said he struggled more with the proposed location. Mr. Stith advised against a time limit and thought applying a stipulation to limit the size of the space used would be more appropriate. Mr. Formella said the Board could instead do a capacity cap by limiting the size of the gatherings, which would lend itself to being more of a temporary solution than a permanent one. He said capping it at 40 patrons at a time might address the concern and that there was more incentive to keep it a temporary solution if the number of patrons couldn't grow.

Mr. Hagaman asked if the Board had to consider office employees as well. Attorney Baum said the maximum of 35-40 patrons would exclude employees. He said he would be open to having a cap of 40 patrons as a condition but wanted some flexibility in case it went over 40 patrons. Major Reed said the cap of 40 patrons made sense to her. Vice-Chair Johnson said the capacity limitation was a good idea and a creative way of solving potential issues, and that it would also ensure that the ongoing use would remain at a scaled-down size if the applicant could end the temporary use. He said it would be reasonable to give the applicant some leeway by increasing the cap above 40. Chairman Rheume said 50 would be a good compromise number.

DECISION OF THE BOARD

*Mr. Formella moved to **grant** the variance, with the following stipulations:*

- *That the place of assembly shall be limited to the square footage of 3,000 feet currently occupied; and*
- *That any scheduled gathering shall be limited to no more than 50 patrons at a time.*

Vice-Chair Johnson seconded.

Mr. Formella said granting the variance would not be contrary to the public interest or to the spirit of the ordinance because, even though it was a use variance for a place of assembly not permitted in the area, there were other places of worship in the area and, paired with other

industrial uses including incoming and outgoing traffic and people, it would not alter the essential characteristics of the neighborhood. He noted that some larger gatherings could add to the traffic but was confident that the Salvation Army could handle it and didn't think the public's health, safety, and welfare would be threatened. He said substantial justice would be done because, even though there might be some reasons to scrutinize the criteria on a request like that, there would be no gain to the public by denying the variance. He said there was no evidence that granting the variance would diminish the values of surrounding property values, noting that there was another place of worship down the road as well as businesses with incoming and outgoing traffic, so it wasn't like a residential area where all of a sudden there would be large gatherings. He said there would be an unnecessary hardship because the Salvation Army was already operating in that location and had some space between them and surrounding buildings, and there was another place of worship in the area, showing that there was not a fair and substantial relationship between the purpose of the use limitation and its application to the property. He said the proposed use was a reasonable one, especially with the cap on the number of patrons, and that capping it at 50 patrons was meant to be a temporary use of the property and made it even more reasonable. He said the cap would also prevent the number of patrons growing and ending up with 100 people or more. He said the criteria were satisfied.

Vice-Chair Johnson concurred with Mr. Formella and had nothing to add.

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

5) Petition of **Karen Dufour, Owner**, for property located at **77 Meredith Way** wherein relief is needed from the Zoning Ordinance to subdivide one lot into two lots which requires the following: A Variance from Section 10.521 to allow 0' of continuous street frontage for both lots where 100' is required for each. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District.

The petition was withdrawn by the applicant.

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 10:30 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary