

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

7:00 P.M.

June 15, 2021

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Peter McDonell, Jim Lee, Christopher Mulligan, Arthur Parrott, David MacDonald

MEMBERS EXCUSED: Phyllis Eldridge, Chase Hagaman

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of May 18 and May 25, 2021.

- **May 18, 2021 minutes**

*The minutes were **approved** as presented by unanimous vote, 6-0.*

Mr. MacDonald recused himself from the following vote.

- **May 25, 2021 minutes**

*The minutes were **approved** as presented by unanimous vote, 5-0.*

Mr. MacDonald recused himself from the following vote.

II. OLD BUSINESS

Mr. Mulligan recused himself from the following petition.

A) Petition of **John McMahon & Jessica Kaiser, Owners**, for property located at **30 Spring Street** whereas relief was needed from the Zoning Ordinance to remove existing front entry and construct new front porch which requires the following: 1) Variances from Section 10.521 to allow a) a 5-inch front yard where 15 feet is required; b) a 4-foot right side yard where 10 feet is required; and c) 29% building coverage where 25% 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 130 Lot 13 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Bosen was present on behalf of the applicant. He noted that the applicant was before the Board in November 2020 and was granted a zero-foot front yard setback variance and a 28.5 percent building coverage variance. He said the new building design was a farmer's porch with a zero-foot front yard setback. He reviewed the petition and criteria.

Chairman Rheume asked Mr. Stith why the front yard setback was advertised as a 5-inch setback instead of a zero-foot one. Mr. Stith said the Planning Department went with what the applicant presented to show that it was different than what was sought in November.

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.

DECISION OF THE BOARD

Chairman Rheume noted that the 5-inch setback Bosen could be problematic. He said a zero-foot setback was previously approved and could be stipulated.

*Vice-Chair McDonell moved to **grant** the variances for the application, with the following stipulation:*

- *A zero-foot front yard setback shall be allowed.*

Mr. Parrott seconded.

Vice-Chair McDonell said the Board approved something similar as far as the front side setback, building coverage and they suggested that something more along those lines would be better. He said the Board's main issue was the right side yard setback, which the applicant fixed, so what was proposed was reasonable and more in line. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. The characteristics of the porch and the home were similar to others in the neighborhood, so there would be no alteration in the essential character of the neighborhood or threat to the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant was obvious and the Board hadn't heard any testimony to suggest harm to the general public or neighbors. He said the values of surrounding properties would not be diminished and that the applicant's property would be improved. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions that distinguished it from others in the area. He said the home was near the front of the lot, the travel portion of the way the lot bordered was farther forward than what the zero-foot setback relief would suggest, and it was a small lot, so he saw no fair and substantial relationship between the purposes of the ordinance and their application to the property. He said the use was reasonable, adding a porch to a single-family home, and should be approved.

Mr. Parrott concurred and said it was a tasteful addition in character with the neighborhood. He said the site plans showed that, even with the addition pushing toward the street, the house would be situated to nearby homes.

Chairman Rheume said he would support the motion. He said there was some disappointment with the Board's original decision and hoped that the applicant understood why the Board was concerned about the side yard setback in terms of future issues with the neighbor.

*The motion **passed** by unanimous vote, 5-0.*

Mr. Mulligan resumed his voting seat, and Mr. Parrott recused himself from the following petition.

- B) Petition of **Spaulding Group, LLC, Owner**, for property located at **180 Spaulding Turnpike** whereas relief was needed from the Zoning Ordinance to for the partial demolition of the existing showroom and construction of new showroom which requires the following: 1) A Variance from Section 10.531 to allow a 15 foot rear yard where 50 feet is required. 2) A Variance from Section 10.591 to allow a structure to be setback 15 feet from a parcel in a Residential district where 100 feet is required. 3) A Variance from Section 10.592.20 to allow the sale, rental, leasing, distribution and repair of vehicles be located adjacent to a Residential district where a minimum of 200 feet is required. 4) A Variance from Section 10.321 to allow a nonconforming building or structure to extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. 5) A Variance from Section 10.1113.20 to allow seven off-street parking spaces to be located in the front yard and between the principal building and a street where parking spaces are not allowed. Said property is shown on Assessor Map 236 Lot 39 and lies within the General Business (GB) District.

Chairman Rheume said the applicant provided arguments why Fisher v Dover should not apply to their case, seeing that the court cases and the law had changed since 2000 when the previous requested variances were denied. He said he had no concerns because he thought the change in circumstance was enough of a change to rehear the petition. The Board agreed.

SPEAKING TO THE PETITION

Attorney Mark Beliveau was present on behalf of the applicant, along with the project team, to review the petition. He said they would build an expanded showroom and drive-in customer service area and add a second floor over the showroom for offices and storage space. He said the total increase of square footage would be 4,100 square feet and that they would add seven parking spaces to replace the existing vehicle display area. He explained why the variances were needed. He reviewed the criteria, noting that a special condition was the property's small size and narrow width compared to the nearby commercially-zoned properties.

In response to Mr. Mulligan's questions, Attorney Beliveau said the intention was to square off the existing structure but not extend any closer to the rear lot line than existing. He said there was no direct access in or out of the property from the Spaulding Turnpike, and there was no

residential use on the parcel that housed New England Marine. Chairman Rheume asked why Spaulding Turnpike was considered the front of the property when the egress and exit entrances were on Farm Lane. Attorney Beliveau said the frontage on the corner lot was the address given by the city, which was the same address of the business 20 years ago. Mr. MacDonald asked if the applicant was required or expected to apply to the New Hampshire Department of Transportation (NHDOT) for any relief or permits. Attorney Beliveau said there was no requirement at the State level.

Vice-Chair McDonell asked if the existing display spaces being replaced were being moved elsewhere. Attorney Beliveau said there would just be a reduction in seven display spaces. Vice-Chair McDonell asked about lighting. Attorney Beliveau said the existing lighting on the lot would remain and the 2nd-floor display room would stay lit. He said the glass on the back side near the word 'service' was reduced by two panes, and a garage door on that back side was now mostly closed, with small windows instead of mostly glass like it was before. He said there was no significant light on the rear side of the building. He further explained that the front of the building facing Farm Lane would have its left side lit and its right side would not have all-night lighting. He said the service side lighting would be dramatically turned down at night, and the left side wasn't oriented toward the residential neighborhood.

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.

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 applicant's dealership was pretty small and fit well on the site and that he didn't see a dramatic difference from what was proposed and what existed. He said the prohibited parking in the front yard was illusory because the turn shouldn't be considered the front of the property. He said if the applicant tried to comply with all the setbacks, the building envelope would be negligible. He said the applicant was squaring off the existing building and not getting more noncompliant than the current building was, in terms of setbacks. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance, pointing out that the essential character of the neighborhood was a commercial one with a fair amount of auto dealerships and wouldn't change, so the public's health, safety or welfare would not be implicated. He said it was a fairly modest evolution of the existing use that had been integrated into the neighborhood successfully over the years. He said substantial justice would be done because it was impossible for the applicant to strictly comply with the ordinance since the setbacks swallowed the entirety of the property and the applicant couldn't develop it without relief. He said the parking variance was really a technical one because it wasn't what anyone normally considered the front of the property. He said it was an extension of the existing nonconformance but not more so, and the requested parking relief only affected the side of the

property that abutted the turnpike. He said granting the variances would not diminish the values of surrounding properties because they would not be negatively impacted. He said the hardship was the special conditions of the property that distinguished it from others in the area. It was a corner lot with frontage on the turnpike but only technically because the real frontage was on Farm Lane, so the parking variance was reasonable and a natural extension of the property. He said the applicant just wanted to extend the building along the contours of the existing footprint, and the closest property within the SRB zone was commercial, far away from residential, and also separated by the utility easement. He said there was no fair and substantial relationship between the purposes of the ordinance and their application to the property; it was a reasonable use, a commercial use in a commercial zone, and met all the criteria and should be approved.

Mr. Lee concurred and said nothing substantial was changing because the applicant was just upgrading and rebuilding the existing building.

Chairman Rheume said he would support the motion. He said the applicant's parcel was snuggled up against the turnpike and much smaller than other dealerships on that strip of land that had gotten varied receptions from the Board. He noted that the Board had been concerned about the 200-ft setback for those other dealerships and that they were closer to the residential area. He said the applicant's parcel did not have that conflict, which was a distinguishing aspect. He said the prior approval two decades before likely had to do with the nature of the tests required to allow approval back then, but the current request was more reasonable. He noted that the Board had heard no concerns from the abutters and neighbors like they had in prior cases.

*The motion **passed** by unanimous vote, 5-0.*

Mr. Parrot resumed his voting seat.

At this point in the meeting, Chairman Rheume asked that New Business Item E, 39 Pickering Street, be taken out of order due to the applicant's request to postpone.

*It was moved, seconded, and **passed** by unanimous vote, 6-0, to take the petition out of order.*

(See Petition E, 39 Pickering Street).

- C) Petition of **Arun Naredla, Owner**, for property located at **1 Harding Road**, whereas relief was needed from the Zoning Ordinance to construct a 6' tall fence within the front yard which requires the following: 1) A Variance from Section 10.515.13 to allow a 6' tall fence within the front yard where a 4' tall fence is the maximum allowed. Said property is shown on Assessor Map 247 Lot 45 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

The applicants Arun and Sally Naredla were present to speak to the petition. Mr. Naredla said they lived next to Elwyn Park and experienced a lot of noise from motor vehicles and there wasn't much privacy from the traffic, so they wanted to build a 6-ft fence. He said the city's traffic engineer approved the plan and said the fence wouldn't cause any sight line issues on the

street. Mr. Naredla said there were no houses across the street from his and that his abutters were in favor of the fence. He reviewed the criteria and said they would be met.

In response to the Board's questions, Mr. Naredla said the speed limit was 25 mph but people usually drove between 50-55 mph, and high speed was a contributing factor to the noise. Regarding the photo of two fences, he said they had two entrances and that strangers cut through their driveway all the time, so they also wanted to install a two-rail system to block off the driveway. He said the traffic engineer concurred. Mr. Stith verified that the two-rail system was not part of the variance and was within the owner's rights.

Vice-Chair McDonnell referred to the photo of the height markers, one for seven feet and two for six feet. Mr. Naredla said the seven feet began at the back deck and there was a hill, so they planned to make the fence six feet across. Mr. McDonnell asked if there were concerns about the fence being six feet right near the side line of Elwyn Road and not having it high enough to block the sound from the hill. Mr. Naredla said they were just doing what they could.

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.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variance for the application as presented, and Vice-Chair McDonnell seconded.*

Mr. Parrott said he lived on the other end of Elwyn Park and often went down Harding Street toward Elwyn Road. He said if someone stopped at that intersection, the sightlines were poor in both directions, especially taking a left toward Lafayette Road, and the variance would address that in particular. He said the sight lines were really due to the hill and the curve in the road. He said the proposal was reasonable and understandable and wouldn't change the sight lines but would help the applicant's situation. He said the two fences would not make the sight lines any worse because they would be set back from the pavement. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance, and would have no effect on the essential character of the neighborhood and would not threaten the public's health, safety or welfare. He said it would remain a difficult intersection to deal with. He said substantial justice would be done because of the benefit to the applicant and the other people who lived on that corner. He agreed that there was nothing else to do but block off access to the applicant's property and nothing to do to make the sight lines better. He said the fences would improve the property and probably the one next to it. He said granting the variance would not diminish the values of surrounding properties because it would have a beneficial effect for the abutting property and no effect on other nearby properties. He said literal enforcement of the ordinance would result in hardship to the applicant due to the special conditions of the property, which were the orientation of the house on the lot and the speed factor on the road. He said none of that could be changed and that the proposal was reasonable and should be granted.

Vice-Chair McDonnell concurred. He said he was initially concerned about the applicant's lot being distinguished from others on the road and that he wouldn't want to see a 6-ft fence running down that road, but it was a corner lot and the fence location was set back and off to the side. He said it was already sort of a fenced-in area because it was heavily treed.

Chairman Rheaume said he would support the motion. He remarked that it was a new section of zoning and the Board never used to talk about fences or heights, but the new zoning resulted from concerns about putting very tall fences close to property lines. He said the applicant's property was more open and his reasons for privacy and noise reduction made sense.

The motion passed by unanimous vote, 6-0.

- D) Petition of Naveesha Hospitality, LLC, Owner, for property located at 3548 Lafayette Rd, whereas relief was needed from the Zoning Ordinance for redevelopment of the property which includes demolishing some buildings and constructing 2 new multi-family structures which requires the following: 1) A Variance from Section 10.5B53.10 to allow new buildings to be constructed on a lot with existing non-conforming buildings, to be outside of the minimum and maximum front building setback if the 50% front lot line buildout has not been met. 2) A Variance from Section 10.5B22.40 to allow buildings to be constructed outside of the special setback from Lafayette Road which requires a 70' minimum and 90' maximum setback from the centerline of Lafayette Road. Said property is shown on Assessor Map 297 Lot 6 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.**

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. Project engineer Erik Sarri and Principal Norman Lee were present via phone. Attorney Phoenix reviewed the petition. He said the large lot only had 150 feet of frontage and the applicant wanted to remove a few cottages, renovate the remaining buildings into apartments, and build two new buildings. He said they met all the dimensional requirements except of where buildings can be located. He reviewed the criteria and said the new buildings would be set back from the road and wouldn't be noticed. He also noted that reasonably-priced apartment living would be provided for Portsmouth. He said the hardship was the very narrow front of existing buildings and a parking lot and a driveway that didn't let them meet the minimum and maximum setbacks from Lafayette Road.

Mr. Parrott asked what the parking space dimensions were. Mr. Sarri said they were the City's standard, 8-1/2 x 9 feet. He said the accessways met the standard. Mr. MacDonald said a large number of residences would be created on the lot and there was a lot of traffic flow on Route One. He asked if traffic safety was taken into account. Attorney Phoenix said the traffic issue would go under site review before the Planning Board. Mr. Sarri said they had a traffic engineer and would meet with NHDOT. Mr. MacDonald asked if the applicant would go before the Portsmouth City Parking and Traffic Safety Committee. Attorney Phoenix said they would if the Planning Board indicated that they do so. He said they had already been before the Planning Board for the initial application and traffic was the main consideration. Chairman Rheaume asked how large the apartment units would be. Mr. Lee said the units would go from studios to a

few 2- and 3-bedroom apartments, but mostly one-bedrooms. He said the units would be modest dwellings and the 3-bedrooms would be the largest units.

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.

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **grant** the variances for the application as presented, and Mr. MacDonald seconded.*

Vice-Chair McDonell said there was a fair amount of work to be done on the project that would go through further review outside of the Board. He said the zoning requirements were geared toward encouraging development along Route One and the applicant adequately explained why it didn't work in his case. He said the proposed use would be different in degree and nature but not very different than what presently existed. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said, given the shape of the lot and configuration of buildings that remained, he saw no alteration in the essential character of the neighborhood and that the development would look and feel similar from the road and would not threaten the public's health, safety, or welfare. He said substantial justice would be done because there was a benefit to the applicant and no harm to the general public or other individuals. He said the values of surrounding properties would not be diminished, noting that the Board hadn't heard anything to suggest that, and he didn't see anything. He said it was a reasonable improvement of the property that would benefit the neighborhood as well as Portsmouth as a whole. He said the hardship was the special conditions of the property that distinguished it from others in the area, including its bottleneck shape with a narrow front that opened up to a large portion of the back but required going past the front buildings to get to it, and the parking area which would remain. He said there was no fair and substantial relationship between the purposes of the ordinance to encourage development nearer the road and their application to the property where that kind of development couldn't reasonably be done. He said the proposed use was a reasonable one and should be approved.

Mr. MacDonald concurred. He said the area was part of the city and Route One that was overdue for revitalization, and he was glad to see something like that being done with property in that area. Chairman Rheume said it was a great re-use of the property, noting that there was a need for modest housing in Portsmouth and that the modest nature in terms of relief made him supportive of the project. He said it wasn't workforce housing *per se* but would be a positive addition to the rental housing stock in the city for many folks that might not otherwise have an opportunity to live in Portsmouth.

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

III. PUBLIC HEARINGS – NEW BUSINESS

Mr. Mulligan recused himself from the following petition.

- A) Petition of, **Lisa Shawney Revocable Trust, Owner**, and **Lisa Shawney, Applicant** for property located at **901 Maplewood Avenue**, whereas relief was needed from the Zoning Ordinance to construct second story addition over existing one-story addition which requires the following: 1) Variances from Section 10.521 to allow a) a 6' right side yard where 10' is required; and b) a 27.5' rear 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 219 Lot 58 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Attorney Bosen was present on behalf of the applicant to review the petition. He said the owner wanted to update the home to include a master bedroom and bath by doing a vertical expansion over the first story within the existing footprint. He said the property's special conditions were that the small structure was old and built before modern zoning and was on a small lot, so the vertical expansion was the only possible solution that wouldn't result in an increase in the nonconformity.

Mr. Stith said the Planning Department staff suggested a few stipulations with respect to the variance for the right yard setback for the one-story addition that was previously granted in 1986. He said the applicant recently did a new survey that provided more accurate information that differed from what was previously granted, so even though the building coverage wasn't changing, it was more than what was previously approved. He said the Board could affirm that the building coverage allowed was 23-1/2 feet, but it was noted on the application and Legal Notice as 27-1/2 feet, and the rear yard encroachment would extend no further than what now existed, or 27 feet could be granted. Attorney Bosen agreed.

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.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variances for the application as presented, with the following stipulations:*

- *The rear yard encroachment shall extend no further than what currently exists; and*
- *The maximum building coverage allowed shall be 23.5 percent.*

Vice-Chair McDonell seconded.

Mr. Parrott said the applicant was asking for very little, a vertical expansion with no change in the footprint that would have little or no effect on the neighbors. 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 alter the essential character of the neighborhood, given the logical expansion, nor pose a threat to the public's health, safety or welfare or injure public rights. He said substantial justice would be done because the applicant would be able to expand the modest house and gain additional space without encroaching on the yard. He said it seemed like a logical thing to do and would be a benefit to the property as well as adjacent ones. He said granting the variances would not diminish the values of surrounding properties because there was no evidence of that. He said literal enforcement of the ordinance would result in a hardship to the applicant, and there was no fair and substantial relationship between the general purposes of the ordinance and its provisions and their specific application to the property. He said the city encouraged people to upgrade their properties, and the project would reflect well on the neighborhood. He said the proposed use was reasonable and should be approved.

Vice-Chair McDonell concurred and had nothing to add.

*The motion **passed** by unanimous vote, 5-0.*

Mr. Mulligan remained recused.

B) Petition of **Stone Creek Realty, Owner**, for property located at **53 Green Street**, whereas relief was needed from the Zoning Ordinance for the demolition of an existing building and construction of a 5-story mixed-use building which requires the following: 1) A Variance from Section 10.5A41.10D to allow 42.89% front lot line buildout where 80% is required. Said property is shown on Assessor Map 119 Lot 2 and lies within the Character District 4 (CD4) and Character District 5 (CD5) Districts.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, with Rob Simmons and Neal Hansen of Tighe and Bond. Attorney Phoenix reviewed the petition, noting that it was a large lot but only had 103 feet of frontage. He said they needed a 24-ft wide driveway to access parking. He emphasized that the building was at the far end of the CD5 District and surrounded by a railroad track, a transportation corridor area, Mill Pond, a hotel, and a small part of Green Street, with no connectivity to buildings like downtown had. He said the driveway and walkway would allow people to access the property and the park. He said they went before several other land use boards that liked the project. He reviewed the criteria and said they would be met.

Mr. MacDonald asked why the building needed to be five stories. Attorney Phoenix said the developer wanted to provide commercial on the first floor and residential above. Mr. Simmons said they got approval from the Technical Advisory Committee (TAC) and the Conservation Commission and were going for final approval from the Historic District Commission (HDC). He said there were no variances on height. Mr. MacDonald asked about the railroad trains. Mr. Simmons said the railcars started at the North Mill Pond, but he didn't know where they terminated or how many trains ran through the neighborhood each day. Attorney Phoenix said

they hadn't looked into it because it wasn't a zoning issue. Chairman Rheume asked if the project would meet all the railroad setback requirements. Attorney Phoenix said they were more than 15 feet away from the track and that safety was a Planning Board vetting process. Chairman Rheume said the zoning recognized that the city had train tracks running through it and there were precautions associated with structures next to them.

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

Vice-Chair McDonell said it was a large project but what the Board was asked to approve was straightforward and there were clear conditions applicable to the property that would allow it to meet all the criteria. He said he would approve the project. Mr. Lee said people in Portsmouth were tired of big 5-story buildings being built all over town and thought it might be contrary to the public interest. He said he could not support the project. Chairman Rheume said it was a large building but also on a large lot. He said the Board enforced the zoning ordinance, and the applicant was asking for a front lot line buildout. He said the location of the lot wasn't something under the Board's control. He said there were several other lots not far away from the train tracks that served useful industrial purposes. He said the building's height was allowed by the ordinance and the character districts were developed with purpose. He said the applicant made a good argument that the building was on the tail end of a series of buildings and not part of a continuation, so there was no gap tooth effect. He said the ordinance was designed around a certain number of stories, and the applicant's proposal took advantage of that and was in full compliance. He said it came down to the one item that the project couldn't fully meet, the front lot line buildout, and that the property was unique compared to other properties because it was next to a railroad line and had a very narrow entrance that required a larger percentage to be dedicated to a driveway. Mr. Lee said the variance would still be contrary to the essential character of the whole town. Chairman Rheume said the project should be kept in the context of what was asked for in terms of relief, the front lot line buildout.

DECISION OF THE COMMISSION

*Vice-Chair McDonell moved to **grant** the variance for the application as presented, and Mr. Parrott seconded.*

Vice-Chair McDonell said he agreed with Mr. Lee that it would be a massive development on a large lot and would continue a trend of massive development. He said the Board could discuss whether it was generally in the public interest, but as Chairman Rheume accurately said, what the Board was looking at was whether this specific request for this specific variance met the criteria. He said he didn't think it made sense to have the decision process be mechanical, but in his mind, one had to look at what the request was and determine if it met the criteria and he thought this one did. He said the request was for a decreased front lot line building, and there

were two things driving it: the green path on the left side of the lot and the driveway on the right side. He said the lot 'is what it is', and the green path was a public benefit and would benefit the lot owner as well, but there was a clear public benefit for that. He said the driveway was driven in part by the size of the structure proposed, but in larger part, it was driven by the fact that one had to have a driveway to get to a building of any substantial size. Taken together, he said there was enough that was unique about the lot, and short of saying 'you can't do anything here', approving the request was warranted.

He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the Board talked about whether it was contrary to the public interest, and as the Chair noted, there were concerns with lots in this zone being disruptive of the building frontage concept that they were trying to have in this area. He said the lot was an exceptional one for a few reasons, one of which was the green path, noting that the absence of a building frontage where the path was situated was a reasonable thing. He said the other side had the railroad tracks, but the purpose of the frontage requirement was to keep the building connectivity, and the existence of the railroad tracks on the side and the way the street curved away from the lot lent to allowing the proposal. He didn't think there was an alteration in the essential character of the neighborhood because, although there was a lot of development, granting the variance would not alter the essential character of that neighborhood or be a threat to the public's health, safety, or welfare or injure to public rights. He said substantial justice would be done because he didn't think there was reasonable harm to the general public, looking at it narrowly in terms of the specific variance request or more broadly in terms of putting a large building on a large lot like that. He said it was a clear benefit to the applicant. He said granting the variance would not diminish the values of surrounding properties because it was clear that it would increase those values and certainly would not diminish them. He said it would be a large new building that he couldn't imagine would diminish the immediately abutting properties or in the area in general. He said the hardship were the special conditions, the biggest one of which was the shape of the lot and its narrowness as it fronted Green Street. He said the other condition was the existence of the railroad tracks and the lack of need for connectivity. On one side was the greenway, which was reasonable to have, and one didn't need to continue building connectivity to the edge of the lot as it abutted the railroad tracks. He said there was no fair and substantial relationship between the purposes of the ordinance and their application to the property. He said the proposed use was a reasonable one, and even though it was bigger than a lot of people in the city might want, it was no bigger than reasonable and it should be approved.

Mr. Parrott concurred. He said he had the same concern that was expressed on the height and mass of the building, but that wasn't before the Board, although he almost wished it were. He said what was before the Board was a very narrow issue. He agreed that the CD4 and CD5 characterization of the way the property was laid out was perhaps not the best category to put the property in because it was squeezed into an odd location among semi-public land, the water, the railroad tracks, and narrow streets with old tired-looking buildings. He said the whole project would look better than what was there now, and the particular limited issue in front of the Board was reasonable to approve. He emphasized that the Board was only being asked to approve one aspect of the large project, and to him, that satisfied the criteria that that they had to judge it by.

Chairman Rheaume said he would support the motion. He reminded everyone that the Board's function was quasi-judicial and they were here to understand and uphold the zoning ordinance. He said that zoning ordinance was developed through a legislative process, where many thoughts were brought together to create the ordinance, and once it was created, someone may not understand why it wasn't perfect for a particular property. He said the Board dealt with that and there were differences of opinion relating to judicial or legislative. He said that's what was before the Board and they had to uphold the zoning ordinance. He asked if the request by the applicant was contrary to what would seem what the framers of that piece of zoning ordinance were intending to do for this particular property, and to him, it wasn't outside of that realm. He said the property had unique conditions – it was on the very end, surrounded by open areas and a railroad track. He said the applicant was doing some good things for the city and meeting the Master Plan goals by the path.

*The motion **passed**, by a vote of 3-2, with Mr. Lee and Mr. MacDonald voting in opposition. However, it did not have the four positive votes required to meet the Board's threshold for rules and regulations. Therefore, the application was **DENIED**.*

Mr. Mulligan resumed his voting seat.

- C) Petition of **Todd and Jan Peters, Owners**, for property located at **379 New Castle Avenue**, whereas relief was needed from the Zoning Ordinance for installation of new heat pump and after-the-fact variance for existing heat pump which requires the following: 1) A Variance from Section 10.515.14 to allow an 8' setback where 10' is required and to allow the proposed unit to be closer to the street than the principal structure. 2) An after-the-fact Variance from Section 10.515.14 to allow an 8' setback where 10' is required and to allow the existing unit to be closer to the street than the principal structure. Said property is shown on Assessor Map 207 Lot 4 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Architect Anne Whitney was present on behalf of the applicant. She said the applicant wanted to put the new heat pump on the back of the garage next to the existing one, which was the best location for it in terms of views. She said it would be screened with a 6-ft fence, the existing significant vegetation, and a shed. She reviewed the criteria and said they would be met.

Mr. Mulligan asked what the intent was for having heat pumps attached to the garage and whether they serviced the main dwelling or the garage. Ms. Whitney said the existing pump was for the garage and the new pump was for the main residence. She said the conduit would be run from the house and the proposed location for the new pump would give it the most screening. Vice-Chair McDonell asked what drove the decision to not place the first pump and then the second one on the side of the garage closest to the house. Ms. Whitney she wasn't involved in the existing pump's location. She said that side of the garage had a door and window and would be more in view of the abutter. Vice-Chair McDonell said he understood but thought it was frustrating to see a grant for relief for the first pump that was installed a few years ago after the fact, and then see a new pump come before the Board so soon. Mr. Stith clarified that relief was granted to build the garage back in 2016, and three years later the condenser unit was added and

received only a mechanical permit vs. a zoning permit. He said the city is now reviewing these permits for zoning.

Chairman Rheume asked if the 2019 unit provided heat in the upper portion of the garage. Ms. Whitney agreed and said it was servicing the garage, and the new unit would serve the entire house, including the renovations that would abut Mill Pond and was close to abutting neighbors. She noted that the HDC approved the location. Chairman Rheume said he didn't understand why something couldn't be located on the back side of the main building. Ms. Whitney said it would be allowed but would be more of a detriment to river views, and it wouldn't be beneficial to the public. She said the chosen location concealed the condensers best from all directions.

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. Lee said the location was the best place to put the unit, seeing that there was already one there that wasn't visible to the public and that received a permit. Mr. MacDonald said it was a request to approve poor engineering. He said the two condensers were in the wrong place, and the applicant was trying to connect them to the service areas with underground conduits. Mr. Parrott agreed. He said the first unit was oversized and would pipe in from the garage to the main building when instead it could be hung on the main building. He said he didn't hear a convincing argument about the location and thought it was more of an engineering project that wasn't engineered thoroughly. He said he was concerned that the first unit went through the permitting process with no concern for where it was located. Mr. Lee said the heat pumps were installed on the second floor and the condenser was on the ground, so he saw no difference whether it was going up or out to get to where it needed to be. Chairman Rheume said it was a zoning concern, not an engineering one. He said the location wasn't horrible, and there was already an existing unit attached to the building it was servicing, but he wasn't convinced that it was necessary. He said the unit should be some place on the main building for the heat pump condenser that serviced the main building, and the one on the garage could be accepted after the fact.

DECISION OF THE COMMISSION

*Mr. Lee moved to **grant** the variance for the application, and Mr. Mulligan seconded.*

Mr. Lee said granting the variances would not be contrary to the public spirit and would observe the spirit of the ordinance. He said it made perfect sense to him and thought the city might have erred by giving the permit without checking the zoning. He said putting the unit on the side of the garage away from the street and screened by vegetation and a fence was the most logical place and would be invisible to passerby. He said substantial justice would be done because the applicant would benefit. He said granting the variances would not diminish the values of

surrounding properties. He said the hardship was whether or not the restriction was a reasonable one, and he didn't believe it was. For those reasons, he said the variances should be approved.

Mr. Mulligan said that, with respect to the existing after-the-fact relief requested, the prior owner relied on a permit gotten from the city, and he didn't think a variance was needed because it would qualify for an equitable waiver. He said adding the second unit next to the first one might offend some of the Board, but a bare wall screened on all sides was the appropriate place for it. He said it wouldn't spoil the view to the water or affect the aesthetics of the main house. He said the relief was minimal, two feet of setback in the south end, where very few properties were religiously compliant with the setbacks. He said there was no fair and substantial relationship between the purpose of the setback ordinance and its application to the property, seeing that the property was unique, with a garage set very close to New Castle Avenue, and none of the surrounding properties had anything like that. He said it was minor relief and should be granted.

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

D) Petition of **Warner House Associates, Owner**, for property located at **150 Daniel Street**, whereas relief is needed from the Zoning Ordinance to install a condenser unit on the back of new Carriage House which requires the following: 1) A Variance from Section 10.515.14 to allow a 3' setback where 10' is required. Said property is shown on Assessor Map 106 Lot 58 and lies within the Civic District.

SPEAKING TO THE PETITION

Architect Anne Whitney was present on behalf of the applicant. She noted that the condenser's location would conceal it from the Warner House garden and from public view. She said the grade was three feet below the top of the retaining wall where the pump would be, and a fence would conceal the unit. She said the main abutter was the church driveway and parking lot.

Chairman Rheume asked Mr. Stith what drove the relief when a lot of other requirements related to the carriage house didn't require relief. Mr. Stith said there were no dimensional requirements in the Civic District and no setbacks for the carriage house itself.

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.

DECISION OF THE BOARD

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

Mr. Mulligan said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the essential character of the neighborhood would not

be altered, nor would the public's health, safety, or welfare be implicated. Substantial justice would be done because the harm to the applicant if the Board required strict compliance with the 10-ft setback would outweigh any gain to the public. He said forcing the unit closer to the main grounds and historic building would have a negative effect on all those features and no gain to the public. He said surrounding property values would not be diminished because the only affected abutting property was the church's driveway and parking area, and there was a significant change in grade. He said the property's special conditions were the unique historic museum property itself on a corner lot downtown and all the reasons why the property required special treatment. He said it was a reasonable use in the zone and met all the requirements.

Mr. Lee concurred and had nothing to add. Chairman Rheume said he would support the motion, noting that the grade difference was a special condition and would give the applicant a unique opportunity to tuck in the condenser, with no effect on the abutting property.

The motion passed by unanimous vote, 6-0.

- E) Petition of **William H. and Barbara Ann Southworth, Owners**, for property located at **39 Pickering Street**, whereas relief is needed from the Zoning Ordinance to replace existing 8' x 8' shed with a 10' x 12' shed which requires the following: 1) Variances from Section 10.521 to allow a) a 2' rear yard where 10' is required; b) a 2' right side yard where 10' is required; and c) 40.5% building coverage where 30% is the maximum allowed. 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 102 Lot 5 and lies within the General Residence B (GRB) District. **REQUESTED TO BE POSTPONED BY APPLICANT.**

Chairman Rheume read the petition into the record. He said the Board received some comments from abutters with concerns, so the applicant submitted a letter asking that the petition be postponed so he could make some changes to the plan. Mr. Mulligan said he was fine with granting the postponement but questioned how much notice abutters were getting. Mr. Stith said the City Staff got the abutter notices out as soon as they could, but in this particular case, the applicant let him know that same day about a revised location for the shed, and the change wasn't advertised, so the application was postponed. He said it might generate additional interest from abutters who already had concerns, especially if the shed was closer to the property line.

DECISION OF THE BOARD

Mr. Mulligan moved to grant the request to postpone, and Mr. Parrott seconded.

Mr. Mulligan said there was some interest from the abutters but the applicant had additional work to do. He said the Board handled sheds all the time and that it wouldn't be an undue burden to the Board to postpone the application until the July meeting, which would give the applicant and neighbors time to discuss it. Mr. Parrott concurred.

The motion passed by a unanimous vote of 6-0.

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 10:45 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary