

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

May 21, 2013

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Susan Chamberlin, Derek Durbin*, Charles LeMay*, David Rheaume, Alternate Patrick Moretti *Arrived after Case 5-3

EXCUSED: Christopher Mulligan, Alternate Robin Rousseau

ALSO PRESENT: Nicholas Cracknell, Principal Planner

Chairman Witham introduced Ms. Juliet Walker from the Planning Department who would be working with the Board of Adjustment in the future.

I. APPROVAL OF MINUTES

The Minutes were approved by unanimous voice vote, with a correction to the vote on Petition #7 to 6 – 1.

Chairman Witham advised that Mr. Durbin and Mr. LeMay would be slightly delayed. Until they arrived, there were only five members and he offered the applicants the opportunity to wait until a sixth member arrived or they could move ahead. He noted that four votes were needed for approval.

II. OLD BUSINESS

Chairman Witham advised that the following petition had been withdrawn.

A) Case # 3-3

Petitioners: Beth L. and Marco A. Gross-Santos

Property: 79 Lois Street

Assessor Plan 232, Lot 14

Zoning District: Single Residence B

Description: Proposed sub-division of an existing lot into two lots, one fronting on Lois Street and containing an existing structure and one fronting on Marjorie Street on which a new home is proposed to be constructed.

Requests: Variances from Section 10.521 to allow the following:

79 Lois Street Lot:

1. A lot area of 12,768 s.f.± where 15,000 s.f. is required.
2. A lot area per dwelling unit of 12,768 s.f.± where 15,000 s.f. is required.
3. Lot depth of 80'± where 100' is required.
4. A rear yard setback of 25'± where 30' is required.

Lot fronting on Marjorie Street, number to be assigned if subdivided:

1. A lot area of 9,600 s.f.± where 15,000 s.f. is required.
2. A lot area per dwelling unit of 9,600 s.f.± where 15,000 s.f. is required.
3. Lot depth of 80'± where 100' is required.
4. A rear yard setback of 14'± where 30' is required.
5. A front yard setback of 15'± where 30' is required.

III. PUBLIC HEARINGS

1) Case #5-1

Petitioner: T. Beyar Realty, LLC, owner, DAS Auto LLC, applicant

Property: 141 Banfield Road , Unit 1

Assessor Plan: 254, Lot 2

Zoning District: Industrial

Description: Automotive repair, restoration and State inspections.

- Requests:
1. A Special Exception under Section 10.440, Use #11.20 to allow the provision of automotive repair, restoration and State inspections in a district where such uses are only allowed by Special Exception.
 2. A Variance from Section 10.592 to allow a motor vehicle service station less than 200' from a Residential or Mixed Residential district.

SPEAKING IN FAVOR OF THE PETITION

Chairman Witham called for anyone to speak in favor of the petition. With no response, the Baord decided to proceed with the next petition and allow the petitioners time to arrive.

2) Case #5-2

Petitioners: H. Brooks Stevens Revocable Trust

Property: 60 Martine Cottage Road

Assessor Plan: 202, Lot 18

Zoning District: Rural

Description: Remove existing residence and construct new residence, porches and attached garage.

- Requests:
1. A Variance from Section 10.521 to allow building coverage of 6.1%± where 5% is the maximum building coverage allowed.
 2. A Variance from Section 10.521 to allow a lot area and lot area per dwelling unit of 46,537± sf. where 5 acres is the minimum required for both.

SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney stated that she was the architect for the project, representing the owners and advised that they would like to move forward. She referred to the site plan showing an existing lot of record with a house built in the 1990's. The house badly needed renovation but was underframed and, after a whole design process, they had decided to demolish the house and reconstruct it as shown on the submitted plans. She stated that all the setback requirements were met, but the house would be slightly over on the allowed building coverage. She pointed out that, while the district currently required a 5 acre lot, the existing lot was only 21%± of that size. She stated that they intended to keep this as a single family lot.

Ms. Whitney stated that granting the variance would not be contrary to the public interest as the setbacks would be met and there was plenty of land. The building coverage was not excessive and it would be in the spirit of the Ordinance to retain an attractive residential lot. She maintained that what was proposed would actually improve the value of surrounding properties as the existing house was not in great shape. Substantial justice would be done by continuing to use the existing lot as a family residence.

Mr. Rheaume asked if the applicant also owned Map and Lot 202-17 and Ms. Whitney responded, "yes." In response to further questions, she stated that there was no current plan to combine the two lots. Lot #17 had no house currently on it and there could possibly be some interest in neighbors breaking it up and sharing it. If there were a desire to make it a buildable lot, they would have to come before the Board. They were discussing what to do with the barn currently on Lot #17 although there were no immediate plans to take it down. It needed a lot of maintenance but was also beautiful and would be nice to have once the house was done. The gravel driveway leading to Lot #16 which appeared to be an accessway would remain.

Ms. Chamberlain asked if Ms. Whitney could explain why, if they were tearing down the original house, they could not build a new house that would fit the zoning requirements. Ms. Whitney stated that almost 700 s.f. of the proposed design would be porches and decks contributing to the overage on the building coverage. They could eliminate some of those but she felt there was a real hardship in that, if you had a five acre lot with 6%, you could have an 8,000 s.f. footprint on a lot. She stated that the small percentage they were requesting over what was required would be in the spirit of the Ordinance, since a lot of that was transitional space. Ms. Chamberlain asked about the original house being built on ledge and Ms. Whitney stated that it straddled the ledge and she described the problems that created and how it affected their decisions on the current design.

Mr. Parrott asked if there were any aspects of the present structure that were of historic or special interest and whether this was the original foundation Ms. Whitney stated that she didn't know about the original dwelling that had burned but the current house was a prefabricated structure. The foundation had been new in the 90's.

Mr. Rheaume asked if the connector porch also counted against the total square footage. Ms. Whitney referred to the submitted plan which showed how all the porches and decks contributed to the 1.1% over the allowed building coverage. Part of the reason for the connector was to push the garage away for better access from the easement road. When Chairman Witham noted that a little more than 3% was residence with the garage, porches, etc. making up the rest, Ms. Whitney noted that this was not a massive house with a little under 3,000 s.f. living space.

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

With no one rising to either speak in opposition to, or to, for, or against, the petition, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Ms. Chamberlain made a motion to grant the petition as presented and advertised, which was seconded by Mr. Rheume.

Ms. Chamberlain stated that she would address the two variances together. The way that this proposal had been described as involving working with ledge and changes in elevations as well as the inclusion of decks and porches, the slight 1.1% increase over allowed building coverage was negligible. She stated that granting the variances would not be contrary to the public interest. No one spoke against it and it did not appear to have any impact on neighbors. The spirit of the Ordinance would be observed in that the purpose of a five acre lot was to preserve the rural character in the district, which this proposal would do. Substantial justice would be done as they would improve the site by building a new house which would also ensure that the value of surrounding properties would not be diminished. She stated that literal enforcement of the provisions of the Ordinance would result in unnecessary hardship. While this was a close call, she felt the nature of the lot dictated the way they had to work with connectors and levels of the home.

Mr. Rheume concurred. While the lot was quite a bit smaller than the five acres required in the Rural District, a five acre parcel was pretty large for a lot in Portsmouth. The applicant also owned the adjoining lot and there might be plans to sub-divide it in some arrangement with neighbors. He felt those neighbors would go into the arrangement knowing that new construction was taking place so they could consider that in their deliberations. Currently, the existence of that lot was a mitigating factor. Mr. Rheume felt that the spirit of the Ordinance would be observed as, minus the porches and deck, the building coverage would be 4.8%. He believed that the hardship in the property was that the district had a particular restrictive requirement for a five acre lot. All the lots contained structures that were far enough away so that there would be no impact on surrounding properties.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 5-0.

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- 3) Case #5-3
Petitioners: Christoph Wienands & April Guille
Property: 307 Wibird Street
Assessor Plan: 132, Lot 12
Zoning District: General Residence A
Description: Rebuild and relocate 150 s.f., 11' high shed to the left, rear of the property.
Requests: 1. Variances from Section 10.570 and 10.521 to allow 6'± left side yard and rear yard setbacks where 10' is required for both for an accessory structure.

SPEAKING IN FAVOR OF THE PETITION

Chairman Witham noted that the Board was still awaiting the arrival of two members so that there were five members sitting.

Mr. Christopher Wienands identified himself as the owner and occupant at 307 Wibird Street. He acknowledged the current composition of the Board and stated that he would like to proceed with his petition. He stated that they wanted to replace a hideous old shed made of plywood with a nicer one that would improve the neighborhood. Due to the lot size, they were very restricted as to where this could be placed. He referred to the submitted property map which showed the existing shed. They proposed moving the replacement to the opposite corner which would be closer to the neighboring house. This placement had been chosen as there was already a large concrete pad from an old driveway which would make a nice foundation. Referring again to the submitted materials, he described the proposed shed with windows and a possible cupola. They felt that view of the abutting neighbor, who also had a shed with a cupola, would be improved by the new placement which would be further to the side.

In response to questions from Mr. Rheame, Mr. Wienands stated that the tree in the upper left corner would be cut down. He confirmed that the shed would be within 10' of an existing 8' high fence which would cover almost all of the shed. Mr. Rheame asked why he needed to crowd the shed against the fence with only a 6' setback. Mr. Wienands referred him to the submitted drawing indicating how, if he placed it further out, it wouldn't fit on the pad and they couldn't put a play set in between. While, technically, the shed could be more compact, he felt it would be detrimental to its appearance. Mr. Rheame asked if he had recommendations from someone who would install the shed on whether the pad would be a positive reinforcement for the shed. Mr. Wienands stated that he had gotten a quote and it was indicated that the paved pad would be suitable as a foundation. He intended, however, to build it himself. He added that he had tried unsuccessfully to contact his neighbors.

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

With no one rising to speak in opposition to, or to, for, or against, the petition, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Mr. Rheame made a motion to grant the petition as presented and advertised, which was seconded by Mr. Moretti.

Mr. Rheame stated that the applicant had presented some good reasons for placing the structure where it was proposed. He stated that a small structure at the back, similar to others in the area, would not be contrary to the public interest. Considering the spirit of the Ordinance, the setback requirement was 10' and the applicant was requesting 6', providing satisfactory reasons why the setback was needed. Substantial justice would be done by allowing full use of the backyard as well as the shed. He noted that the encroachment was the closest at the back but, as the applicant had indicated, the overall sight lines would be somewhat improved. Additionally, a shed that had deteriorated would be replaced by a new one so that should increase the value of the applicants'

property as well as those of the surrounding neighbors. Mr. Rheume felt that a special condition that was driving the hardship test was the existing concrete pad which gave the applicant the opportunity to build a desirable structure at lower cost with less disruption to the neighborhood. This was a reasonable use of the property and strict conformance to the provisions of the Ordinance would unnecessarily result in extra costs.

Mr. Moretti stated that he agreed with Mr. Rheume’s statements.

Mr. Parrott stated that he would not support the motion as he felt the shed could be moved at least four more feet off the property line. This was a narrow deep lot with a wooden fence. If the fence fell down, the shed, which was a large structure would look much too close to the neighbor. With a little time, effort and expense the structure could reasonably be moved forward four feet.

Chairman Witham stated that many sheds were being proposed with a 3’ setback and this was asking for 6’. The aerial map showed that there were many outbuildings in the neighborhood, some right against the property line, so that he felt that this shed would not change the essential character of the neighborhood.

Mr. Rheume added that he believed the shed would be more conforming than what currently existed. While he shared some of Mr. Parrott’s concerns, he felt the property owner had made a decent enough case so that his request should be granted.

The motion to grant the petition as presented and advertised was passed by a vote of 4 to 1, with Mr. Parrott voting against the motion.

Messrs. Durbin and LeMay assumed their seats at the meeting. Mr. Moretti continued in a voting capacity.

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- 4) Case #5-4
 - Petitioners: Janet Morly, owner, Roland Cote, applicant
 - Property: 188 Union Street
 - Assessor Plan: 135, Lot 27
 - Zoning District: General Residence C
 - Description: Replace existing 8’ x 8’ shed with 10’ x 14’ shed in the left, rear of the property.
 - Requests: 1. Variances from Section 10.570 and 10.521 to allow 3’± left side yard and rear yard setbacks where 10’ is required for both for an accessory structure.

SPEAKING IN FAVOR OF THE PETITION

Mr. Roland Cote stated that he lived at 188 Union Street. He described features of his approximately 50’ x 50’ back yard noting that in the left rear was an old 8’ x 8’ shed they wanted to replace. There was a 6’ high fence which would shield the shed from the view of someone standing in the adjacent neighbors’ yard. He stated that the essential character of the neighborhood would be unchanged by replacing this shed and that it would not be contrary to the public interest. In the packet there was a letter from a neighbor who preferred the shed to be in a location where it would not be visible and he

distributed another note from a neighbor that he had just received. Mr. Cote stated that the value of adjacent properties would not be diminished but would be improved by replacing an old wooden shed with a modern structure. He stated that his beautiful lawn was his signature and he would find it a hardship to have to move the shed onto the lawn diminishing that area and leaving hard packed dirt in its place. He felt that the 6' fence and approval of the neighbors were mitigating factors.

In response to questions from Mr. Moretti and Mr. Durbin, he stated that the existing shed was 3' from both the rear and left property lines and he would like to maintain that distance. He confirmed that the size would increase from 8' x 8' to 10' x 14'. The 8' x 8' model shown on the spec sheets was just too small and really could only contain the lawn mower while he now also needed to store a snow blower.

DECISION OF THE BOARD

Mr. Durbin made a motion to grant the petition as presented and advertised, which was seconded by Ms. Chamberlin.

Mr. Durbin stated that this was a basic shed replacement with the hardship the most challenging test. He felt that the hardship was that the shed in the current size was not very functional. He noted that the existing setbacks would remain and not encroach further so that granting the variance would not be contrary to the public interest. The spirit of the Ordinance would be observed as the light and air between abutting property owners would be maintained with no real change. In the substantial justice test, balancing the hardship to the owner if the petition were denied against any benefit to the public, he felt the balance weighed in favor of the applicant. It would be hard to claim that replacing a shed not in the best condition with a new one would decrease the value of surrounding properties.

Ms. Chamberlin noted that one of the neighbors preferred the new location because their current view was blocked by the garage and the other neighbors seemed to have no problem with the proposal. Mr. Parrott stated that the structure on the other side of the fence was a garage which made this a different situation and he felt that the shed would not have an adverse effect.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

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- 5) Case #5-5
 Petitioners: Richard & Kathleen Boduch
 Property: 34 Hunking Street
 Assessor Plan: 102, Lot 9
 Zoning District: General Residence B
 Description: Install a/c condenser at right, rear of the property.
 Requests: 1. A Variance from Section 10.570 and 10.521 to allow a 3'5" ± right side yard setback where 10' is required for an accessory structure.
 2. A Variance from Section 10.570 and 10.521 to allow a 1'11" ± rear yard setback where 10' is required for an accessory structure.
 3. A Variance from Section 10.521 to allow building coverage of 34.6%± where 34.4 exists and 30% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kathleen Boduch stated that she was one of the owners of 34 Hunking Street, a property which they had been renovating, which included removing a shed and restoring two stockade fences about 7’ high. They had installed a new furnace in the back right hand corner of the house where there was a little tucked in area. She stated that it would be advantageous to place the new air conditioning unit in that area which would be the least obtrusive spot on the property. As indicated in the packet, they had the support of most of the most immediate abutters. In response to questions from Mr. Rheume, she stated that decibel information had been provided in the packet and they had not yet checked into the “hush kits,” that he believed were offered by manufacturers.

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

With no one rising to speak either in opposition to, or to, for, or against, the petition, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Ms. Chamberlin made a motion to grant the petition as presented and advertised which was seconded by Mr. LeMay.

Ms. Chamberlin stated that granting the variance would not be contrary to the public interest as this was a smaller structure than it appeared from the variance request descriptions. The condenser was a pretty small item to add to the property and there were not a lot of options in its placement. She read a comment from neighbors which stated that the applicants had made considerable effort in locating the condenser in an area having minimal impact on abutters. The neighbors described the location as being shielded on two sides by the fence blocking the unit from view. Ms. Chamberlin felt the efforts by the applicant to shield the unit observed the spirit of the Ordinance. Substantial justice would be done as this would be part of overall renovations that would improve the neighborhood. Regarding the unnecessary hardship test, she stated that there were not a lot of places to put the condenser and, for the reasons stated by the applicant, it needed to be in the proposed location.

Mr. LeMay added that the biggest concern with variances of this nature was noise and it would be possible to move the unit so that less relief was required but the trade-off would not help anybody. He believed the corner location was the best solution. Chairman Witham commented that the unit might be quieter where it was than if it met the setback.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

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- 6) Case #5-6
 - Petitioners: Donald Lamothe Revocable Trust ½ Int. Trustee & Marcia K. Lamothe Revocable Trust ½ Int. Trustee
 - Property: 36 Sherburne Avenue
 - Assessor Plan: 113, Lot 11
 - Zoning District: General Residence A

Description: Construct second floor addition with dormer over existing portion of one-story home, rebuild deck

- Requests: 1. A Variance from Section 10.321 and Section 10.324 to allow a lawful nonconforming building to be expanded or reconstructed in a manner that is not in conformity with the Zoning Ordinance.
2. A Variance from Section 10.521 to allow a right side yard setback of 4'± where 10' is required.

Ms. Jennifer Ramsey stated that she was the architect appearing on behalf of the applicant. Referring to the submitted packet, she stated that the existing front porch was part of the original front portion of the structure dating back to the early 1900's. The addition had been constructed later and they were looking to build a second story over that addition, which would represent an upward extension of an incursion into the right side yard setback. She reviewed the packet, explaining the plans and elevations and detailing what they were proposing. They had spoken to the neighbors and she was not aware of any opposition.

Mr. Rheume stated that his main concern was the addition as it was wider than the existing front porch of the house. They were looking at an increase in roof height but he noted it was trying to keep the same pitch to the back roof and maintain the gambrel style. Ms. Ramsey stated, "exactly." Mr. Rheume stated that was his biggest concern with respect to infringement on the neighbors. He was trying to understand the size and asked the overall dimensions of the master bedroom. When Ms. Ramsey stated it was 15' x 13,' he stated it was a decent size for a modern master bedroom and asked if the width of the addition was to accommodate that size. Ms. Ramsey stated it was and also to accommodate the additional bathroom.

Mr. Parrott asked if the footprint would remain unchanged and Ms. Ramsey stated it would. In response to additional questions, she stated that the front portion was 16' wide and the grade to ridge on the addition when built would be just shy of 29'. Mr Parrott asked how that compared to adjacent houses and Ms. Ramsey responded that the house to the right was taller and that to the left on the same level.

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

With no one rising to speak to, or to for or against, the petition, Chairman Witham closed the public hearing.

DECISION OF THE BOARD.

Mr. Parrott made a motion to grant the petition as presented and advertised, which was seconded by Mr. Durbin.

Mr. Parrott stated that this was a pretty straightforward petition. With respect to the impact on neighbors, the footprint would remain unchanged with the main difference additional massing and height at the back. The ground sloped so there was not as much impact on abutting properties. If anything, the effect would be positive.

Addressing the criteria, Mr. Parrott stated that granting the variances would not be contrary to the public interest and the spirit of the Ordinance would be observed. As had been noted, this was an area of unusual architecture in some ways and many homes had been expanded so that the character of the neighborhood would not be changed. In the justice balance test, granting the variances would allow the owners to make the home more usable with no detriment to the general public. He stated that the value of surrounding properties would not be diminished as the value of the home would be increased and the effect on adjacent properties would be a positive one. Regarding the unnecessary hardship test, Mr. Parrott stated that the existing house was very small, only 16’ wide at the front. It was an unusual configuration on a deep lot and what had been proposed was the only feasible way to gain any additional space.

Mr. Durbin stated that he incorporated Mr. Parrott’s comments and noted that there would be no change in the footprint.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

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- 7) Case #5-7
 - Petitioner: Ronald C. Cameron
 - Property: 14 Elwyn Road
 - Assessor Plan: 251, Lot 121
 - Zoning District: Single Residence B
 - Description: Replace existing rear deck with a 15’±(in diameter) half-round deck.
 - Requests: 1. A Variance from Section 10.521 to allow building coverage of 22.7%± where 22%± exists and 20% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. David Brady stated that he was the contractor for the property. He described the proposed deck replacement and there were several brief questions and answers during which period it was discovered that, while it had appeared the proposed deck was over 18,” it was not. Chairman Witham noted that only structures over 18” were subject to the dimensional requirements in the Ordinance. With no further discussion, the Board concluded that a variance was not necessary and the applicant was advised that his application fee would be returned.

Mr. Rheume recused himself from the following petition, leaving six voting members.

- 8) Case #5-8
 - Petitioners: Regeneration Realty Trust, owner, Demeters Steakhouse, applicant
 - Property: 3612 Lafayette Road
 - Assessor Plan: 297, Lot 3
 - Zoning District: Gateway
 - Description: Relief from parking requirement.
 - Requests: 1. A Variance from Section 10.1112.30 to allow no additional off-street parking spaces to be provided where 9 off-street parking spaces are required for a 936± s.f. patio.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated that he was appearing on behalf of the applicant owner of Demeters Steakhouse, Mr. Zack Gage, who was in attendance. He passed out a plan labeled C-3 which had been submitted to the Planning Board in 2011, noting that there was also in the packet at that time plans for a three season deck. When they went before the Planning Board, there were no additional parking spaces available. Although it was not indicated at the time, it was subsequently determined by the Planning Department that a variance would be needed. He indicated the parking area on the plan which included the spaces already allocated to the restaurant as well as where snow was stored. The 63 spaces indicated on the plan were provided to the office use on the property. Those offices were closed at night when Demeters was open so that there would be 50 spaces allocated to office use for businesses which had closed, which freed up those spaces.

Addressing the criteria, Attorney Pelech stated that the special condition of the property creating a hardship was that it was surrounded by wetlands within the buffer shown on the plan. This made creation of additional parking at the rear not feasible without going to the Planning Board for a conditional use permit. This was a reasonable use as it was allowed in the district and already existed on the site. There was no fair and substantial relationship between the general purposes of the Ordinance provision and its application to this property. This was a property with at least 50 additional open spaces available to the restaurant in addition to the 48 already provided for that use. It would be reasonable to grant a variance for the 9 additional spaces that would be needed for the patio area. He stated that substantial justice would be done as the hardship on the owner if the petition was denied would not be outweighed by any benefit to the public. He maintained that the 9 parking spaces would not be needed as there were ample available spots for the use. Granting the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed. Nothing would change on the site so that there would be no change in the essential character of the neighborhood or threat to the health, safety and welfare of the general public. Attorney Pelech stated that there would be no diminution in the value of surrounding properties. This was not a lot where there was overcrowding of vehicles or a traffic problem.

Ms. Chamberlin asked if they had, or needed, permission from the office occupants to use those spaces after hours. Attorney Pelech stated, “no.” There were not, for purposes of the individual leases, specific allocated spaces. The allocation of 63 to business and 48 to the restaurant was only because of the Zoning Ordinance with different standards for each use. She directed a question to Mr. Cracknell noting that they had waived parking requirements for some other properties in the past because the Council was working on a solution and she wondered procedurally where that stood. Mr. Cracknell stated that he was not aware of any changes that would affect the areas outside the downtown so there was nothing in the works that would affect this parking situation. The spaces were unassigned and the project was approved with a three season porch, designated as outdoor patio space when it was approved by the Planning Board. There was no requirement in the Ordinance for off-street parking for outdoor patio space so enclosing it fully for year-round use which was the reason they were before the Board as it required the specified off-street parking. He confirmed that they were free to use any open spaces on the site.

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

With no one rising to speak in opposition to, or to for or against, the petition, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Ms. Chamberlin made a motion to grant the petition as presented and advertised, which was seconded by Mr. Parrott.

Ms. Chamberlin stated that, based on the information that had been presented regarding the required nine parking spaces, there appeared to be plenty of space available during the evening when the restaurant was open. They were simply closing in the porch to make it a four-season structure, which was not a significant change.

Addressing the criteria, Ms. Chamberlin stated that granting the variance would not be contrary to the public interest. There was no indication that there would be overcrowding in the area. The spirit of the Ordinance would be observed and substantial justice done. One of the purposes was to provide adequate parking and there was plenty of parking available. There was no indication that the value of surrounding properties would be diminished. She stated that the special conditions included the proximity of the property to the wetlands making it difficult to create new parking within those setbacks and there were existing spaces readily available.

Mr. Parrott stated that he concurred.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of the sitting members of 6 to 0.

Chairman Witham asked if the petitioners for 141 Banfield Road had arrived. With no response, Mr. Parrott made a motion to postpone the petition to the reconvened meeting of the Board on May 28, 2013. Mr. Rheume seconded the motion and it was passed by unanimous voice vote.

IV. OTHER BUSINESS

A) Assigning Alternates

Chairman Witham noted that there had been an issue raised by a Board member with regard to how an alternate should be chosen when one was needed to fill the voting seat for a regular member for a meeting or single petition. The suggestion was to alternate between those two members. He noted that State statute just indicated that the Chair should choose an alternate and opened for discussion whether the Rules and Regulations should be amended with a policy on handling alternate assignment or leave it, as outlined in the statutes, that the Chair should choose.

Mr. Durbin stated that he felt the intent of the statute was to defer to the Chair in making the decision on who should sit. He noted that he had been an alternate for three years and typically was the second alternate. He felt that, once you got into refining it by rule, you needed some justification to support that and he wasn't sure that was necessary under the circumstances. He personally did not

think there was an issue or any favoritism. This was a pretty transparent Board and he would defer to the decision of the Chairman.

Mr. LeMay stated that this issue had been discussed the last time a revision to the Board of Adjustment Rules and Regulations had been considered and they had decided to stick with the State Statute. He thought it was important for the Chairman to have that discretion. On the one hand a new alternate should not be bombarded with difficult cases early on but, on the other hand, the Chairman might not want to exclude them if they had experience in a particular area. He did not feel the Chairman wanted to include or exclude any particular member but that his decisions were most likely in the best interest of the Board and petitioners. They strove to have the most honest and objective members, which avoided any future complications, and he felt that making some rule about circulating among alternates in a particular order was an unnecessary complication and just opened the Board up to appeals.

Mr. Parrott stated that the present system, which was in accordance with State statute, was appropriate and this was the first time he heard any complaint or criticism of the way it worked. From a practical point of view, an alternate was in a learning position and they could learn by attending and listening and considering. Typically, you didn't have two new alternates at the same time so one might have more experience and it would be unwise and unfair to the Board to have someone at the first meeting being swapped back and forth. The Chairman could appropriately take all these things under consideration under the current system and he felt that historic system was appropriate and workable.

Chairman Witham stated that he appreciated their comments.

B) Form-Based Code Design Charrette

Mr. Nick Cracknell stated that the Planning Department was coordinating a four and a half day charrette on form based codes which would be open to the public. Their goal was to bring people together to try and develop a consensus and vision plan. He defined the proposed boundaries of the area that would be involved in form based codes, mainly the CBA and CBB. They had inventoried 400 properties in that area considering 120 attributes for each building to see what worked and didn't work. If the charrette resulted in a shared vision, the role of the consultant would be to develop a form based code that would incorporate issues such as height, and whether there were adequate parks, playgrounds and other public spaces. Mr. LeMay asked about logistics and Mr. Cracknell stated that, after the opening session, there would be different times for round table discussions and open studios, with forums for various interest groups.

IV. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 8:45 p.m.

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk