

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

**July 15, 2014 (to be
reconvened July 22, 2014)**

MEMBERS PRESENT: Vice-Chairman Arthur Parrott; Susan Chamberlin; Derek Durbin; Charles LeMay; David Rheume; Alternate: Patrick Moretti

MEMBERS EXCUSED: Chairman David Witham; Christopher Mulligan

ALSO PRESENT: Juliet Walker, Planning Department

Vice-Chairman Parrott announced that the petition for Case # 6-12 for the cell tower at 70 Martine Cottage Road was withdrawn and there was a request for postponement of Case # 7-3 at 209 Gosport Road.

Mr. LeMay made a motion to approve the withdrawal without prejudice of 70 Martine Cottage Road. Mr. Rheume seconded and all were in favor.

Mr. Rheume made a motion to accept the postponement of 209 Gosport Road. Ms. Chamberlin seconded and all were in favor.

Vice-Chairman Parrott informed the public that there were six voting members, with one Board member recusing in one case and four positive votes were required to pass a petition.

Vice-Chairman Parrott asked that any speakers that were not on a petition, provide a business card or clearly write their name, address and company on paper for the record.

I. APPROVAL OF MINUTES

A) January 28, 2014

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes.*

B) March 18, 2014

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes.*

C) April 29, 2014

It was moved, seconded and passed by unanimous voice vote to approve the Minutes.

II. PUBLIC HEARINGS - OLD BUSINESS

1) Case # 6-1

Petitioners: Thomas W. and Anna L. Johnson, owners, New Cingular Wireless PCS LLC (“AT&T”), applicant

Property: 70 Martine Cottage Road

Assessor Plan 202, Lot 19

Zoning District: Rural

Description: Install a wireless communications facility with a 130’± tower.

Requests: The Variances and Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.923.30 to allow a wireless telecommunications facility.
2. A Variance from Section 10.521 to allow a structure height of 130’± where 35’ is the maximum allowed.

Mr. LeMay made a motion to approve the withdrawal without prejudice of this petition. Mr. Rheume seconded and the motion passed, 6-0.

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 7-1

Petitioner: Kyle Crossen-Langelier

Property: 304 Leslie Drive

Assessor Plan 209, Lot 47

Zoning District: Single Residence B

Description: Construct an 11’± x 21’ free-standing carport.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Variances from Section 10.521 to allow a front yard setback of 18’11”± where 30’ is required and a left side yard setback of 7’± where 10’ is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Charles Griffin appeared before the Board on behalf of the applicant. Attorney Griffin reviewed the criteria, noting that granting the variance for the custom designed, rust-free carport would not diminish the value of surrounding properties, as it would be less obtrusive than a conventional garage and shielded by a fence and bushes. He submitted a letter of approval from the neighbor, Robert Marshall at 313 Leslie Drive across the street who would be in full view. He said it would not be contrary to the public interest as there were 20 garages and 6 carports in the 43 lot subdivision. He said the small carport with a 6” overhang would not cause overcrowding of

the lot, would not cause a loss of light or air and would not be contrary to the spirit or intent of the Ordinance. He said the special conditions of the property were that it was the largest lot in the area, but irregular in shape, being narrow at the front and sloping to the rear. He added that there a custom, underground drainage system was installed several years before, along with a swale collection system to the rear of the property that managed drainage. He said the home was centered on the lot and the applicant was proposing to place the carport on the irregular shaped driveway so it would be on a flat surface and not interfere with the water flow, parking, side walkway and shed. He said the rights to preserve the current setback would not outweigh the applicants' rights to construct a carport and due to the special conditions, the property could not be reasonably used. He said granting the variance would result in substantial justice.

Mr. LeMay asked if there was ever a garage on the end of the house. The applicant, Ms. Kyle Crossen-Langelier said a small porch addition was put on before she owned the house.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. William Pierce of 53 Rogers Road in Kittery, Maine said he also owned the house at 296 Leslie Drive, next door to the applicant and his father-in-law owned another house on the other side. He said the property already had an intensive use with an extra dwelling that was an in-law apartment in a single-family neighborhood and he believed the character of the neighborhood would change with the addition.

Mr. LeMay asked which side of the house he and his father lived on. Mr. Pierce said his house was a rental toward the river and his father-in-law lived on the other side. Mr. Rheume asked what his father-in-law's name and address was and Mr. Pierce said he believed his father-in-law was not in favor of the petition, but he could not speak for him and did not provide his name and address.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Kyle Crossen-Langelier clarified that her mother lived with her, not in an apartment. She said she spoke with Mr. Pierce's father-in-law who said he had no problem with the proposal and said he was not going to attend the meeting. She said Mr. Pierce rented the house next door so she did not understand why he was speaking against the petition.

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Rheume made a motion to **grant** the petition as presented and advertised and Ms. Chamberlin seconded the motion.*

Mr. Rheume said he was not a big fan of carports because they did not offer a homeowner a lot of shelter for vehicles and did not last as long as garage, however he looked at the application to see if a garage would work and considering the complications mentioned, the proposal seemed reasonable. He said although garages dominated the neighborhood, there were some carports in the neighborhood and felt that the application met the criteria.

Mr. Rheume reviewed the criteria, noting that granting the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed because the carport was a secondary option to a garage. He said a small side yard setback was being requested and the placement and open nature of structure reduced impacts to the neighbors. He said the front yard setback was over half of the 30' required, but any carport or garage would need a setback variance. He said substantial justice would be done by allowing full use of the property. He said carports might not be as good looking or as permanent as garages, but they were not unprecedented in the neighborhood of older homes so the carport would not stand out and the values of surrounding properties would not be diminished. He said literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because of the location of the home on the lot, the uniqueness of the existing drainage system, and the awkward orientation of the drive.

Ms. Chamberlin agreed with Mr. Rheume's comments including the hardship created from the special conditions of the oddly shaped property.

The motion to grant the petition failed by a vote of 3-3, with Mr. Durbin, Vice-Chair Parrott and Mr. LeMay opposing.

2) Case # 7-2

Petitioners: Kevin Drohan and Heather Mangold

Property: 1240 Maplewood Drive

Assessor Plan 219, Lot 29

Zoning District: Single Residence B

Description: Add a second story over existing attached garage.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a right side yard setback of 2'6" ± where 10' is required.
3. A Variance from Section 10.521 to allow a rear yard setback of 10'± where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Charles Hoyt, architect for Mr. Kevin Drohan and Ms. Heather Mangold appeared before the Board. Mr. Hoyt said their garage was used for storage and in disrepair and he was asked to renovate it so they could put storage above and use the garage for their vehicle.

Mr. Hoyt said the variance would not be contrary to the public interest because it was a modest change to an existing structure. He said the changes would bring the structure up to code and would be in the spirit of the Ordinance. He said they were not able to insure their home because of the disrepair and substantial justice would be done to allow the owner to reclaim their garage with a new storage area above. He said the renovation would maintain the architectural character of the existing building except for the door, which would be an improvement. He said surrounding

property values would not be diminished and presented letters of approval from three abutters. He said literal enforce would result hardship by denying use of garage.

Mr. LeMay asked what it was about the house that the garage could not be insured. Mr. Hoyt said the existing deck off the house was not connected to the garage, but the garage was in such a state of disrepair that it could not be insured.

Mr. Kevin Drohan, the applicant of 1240 Maplewood said he switched insurance carriers the previous year and was told they would not insure the house unless he repaired the garage. He said they removed the awning that connected the garage to the house so they would comply with their mortgage requirements for insurance. He said they wanted to continue improvements to make the space more useable for their family needs.

Mr. LeMay asked if the unfinished storage above the garage could be turned into a living space at some point. Mr. Hoyt said they intended on using an opening with a ladder for access.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. LeMay made a motion to **grant** the petition as presented and advertised and Mr. Durbin seconded.*

Mr. LeMay reviewed the criteria, noting that granting the variance would not be contrary to the public interest because it was only a modest increase in intensity to an existing structure. He said it would not alter the essential character of the neighborhood and would observe the spirit of the Ordinance. He said substantial justice would be done, as the benefit to the applicant in granting would not be outweighed by the public interest. He said the value of surrounding properties would not be diminished and they had not heard any objections to indicate a significant encroachment on the neighbors. He said literal enforcement of the Ordinance would result in an unnecessary hardship. He said it was a pre-existing, non-conforming lot and it would be unreasonable to deny the request.

Mr. Durbin concurred with Mr. LeMay’s comments and added that it was a small vertical expansion on an existing structure and it did not appear to impact any abutting property owners.

Mr. Rheume said he was slightly concerned with the setbacks and survey line, but the direct abutters did not indicate any objection. He said the expansion looked like it could be living space, but the applicant reinforced that it would only be used for storage.

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

- 3) Case # 7-3
 - Petitioner: Christine V. Crockett Revocable Trust
 - Property: 209 Gosport Road
 - Assessor Plan 224, Lot 10-12
 - Zoning District: Single Residence A
 - Description: Construct a new single family home within 75’ of a saltwater marsh.
 - Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 - 1. A Variance from Section 10.301(6) – 1982 Zoning Ordinance to allow a structure 75’± from a saltwater marsh where a minimum of 100’ is required.

DECISION OF THE BOARD

Mr. Rheaume made a motion to accept the postponement of 209 Gosport Road. Ms. Chamberlin seconded and the motion passed, 6-0..

- 4) Case # 7-4
 - Petitioners: 402 State Street LLC, owner, JR Seely Company LLC, applicant
 - Property: 402 State Street
 - Assessor Plan 116, Lot 12
 - Zoning District: Character District 4-L
 - Description: Renovation to create three residential condominium units with related off-street parking.
 - Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 - 1. A Variance from Article 10.5A42.10A to allow 1,609± s.f. per dwelling unit where a minimum of 3,000 s.f. is required.
 - 2. A Variance from Section 10.1114.20 to allow off-street parking that does not comply with the dimensional requirements.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Weaver appeared before the Board representing the applicants, Mr. Chris and Jason Beane who had a purchase and sale agreement. Attorney Weaver outlined the proposal for condominium units to be located in the General Urban Character District 4, formerly known as Central Downtown Business District B. He said they brought the proposal to the HDC, received approval and were waiting to go before the Planning Board for site review.

Attorney Weaver then reviewed the criteria, saying the variances would not be contrary to the public interest or spirit of the Ordinance for residential purposes. He said the square footage would be consistent in lot size, building coverage and intensity of neighboring properties. He said the off-street parking space would be designed as an incentive for compact cars and would be assigned so there would be no confusion. He said the proposal would preserve and enhance the architectural character of the structure and would be in keeping with surrounding properties. He said the location and use of the property was at the edge of Downtown that would encourage foot traffic and economic growth for the shops and restaurants. He said the increased listing price would also increase the value of surrounding properties. He said the special conditions were that the property

and building maintained many of the residential characteristics from 1840, unlike some of the surrounding commercial properties. He said this was also an opportunity to establish good parking regulations for the space. He said the purpose of the Downtown overlay district was to promote economic vitality and this project would create more foot traffic into that area.

Mr. Rheume asked several questions for clarification on the parking dimensions and then asked if they were working with the abutting property owners to acquire an easement for ingress and egress. Mr. Jason Bean from Meredith, New Hampshire said their parking was maxed out so they had not. Further discussion ensued regarding the number of parking spaces required and Ms. Walker provided clarification.

Vice-Chair Parrott noted that a letter in the packet addressed to the HDC, the Zoning Board, and the Planning Board, signed by Attorney Tim Phoenix, stated that the renovation would be for three “commercial” condominiums. Attorney Phoenix said that was a typing error and they would actually be residential units. He said they originally considered commercial uses, but found there was more interest in developing a condominium. Vice-Chair Parrott said he wanted the record to show that the use would be strictly residential.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Rheume made a motion to **grant** the petition as presented and advertised and Mr. Moretti seconded the motion.*

Mr. Rheume said he was somewhat concerned with backing in and out of the spaces, but agreed with the applicant that the requirement for 3,000 s.f. per dwelling unit was new to the Zoning Ordinance and the proposal was not out of character with the surrounding block of buildings. He said he asked a Planning Board member for the reasoning and the best explanation was that it was added to keep density in the area down.

Mr. Rheume reviewed the criteria, noting that granting the variance would not be contrary to the public interest or spirit of the Ordinance because there was more parking than required and would not negatively affect the proposed lot area, as the number of units would reflect the character of the surrounding neighborhood. He said substantial justice would be done by allowing the property owner and buyer to make full use of the property and provide parking. He said the values of surrounding properties would not be diminished because they were proposing a high quality renovation that would restore the historic look of the property, which would increase property values up to current standards. A fair and substantial relationship did not exist between the general public purposes of the Ordinance and their application to the property. The special conditions that distinguished the property from others in the area was that it was an existing structure with a tight area in the back that was not large enough for a full parking area and a sort of awkward size structure which would be very large for a single dwelling but more reasonable for three dwellings.

Mr. Moretti added that they would be bringing the building up to modern standards, while keeping its historic character.

The motion passed by a vote of 6-0.

5) Case # 7-5

Petitioner: Reginald E. and Debra S. Perry

Property: 180 Cutts Street

Assessor Plan 209, Lot 28A

Zoning District: General Residence A

Description: Permit a photography studio in an existing residential unit.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use #19.22 to allow a Home Occupation II to be conducted in a residential district.

SPEAKING IN FAVOR OF THE PETITION

Mr. Bud Perry of 180 Cutts Street said he had run his operation in Rye for the last 35 years, the property was in the process of being sold and he would not renew his lease there.

Mr. Perry said most of his work was digital and done off site now so there would not be a lot of traffic in the proposed location and there were already three parking spaces for a tenant. He said there would be no need for extra storage areas and no change to the building except for replacing the door with a top view door. He said his digital processing was high end with no chemicals or fumes.

Mr. LeMay asked if the site would be just for office use or would include onsite photography. Mr. Perry said most of the square footage would be for production with printers, barely leaving enough room to do portraits for a family of three. He said he did most of his portrait work offsite.

Ms. Chamberlin asked if the printing equipment would generate noise and Mr. Perry said high end, dry process digital printers were very quiet and with no fumes.

Mr. Rheume asked if 182 Cutts Street was a condominium and Mr. Perry said it was a studio apartment over the garage of his main residence at 180 Cutts Street. Mr. Rheume asked if there were any other residents on the property and Mr. Perry said there were not. Discussion ensued regarding whether the property was listed as a duplex and Ms. Walker stated that it was listed as two single-family residences.

Mr. LeMay said an action was taken in 1986 to grant a second dwelling over the garage, and he wondered if the home occupation would abandon the dwelling. Ms. Walker said home occupancy could exist in tandem with other variances for the dwelling. Mr. Rheume wondered if a future owner could return the apartment to a residential use and Ms. Walker confirmed that home occupancy didn't exclude the possibility of residential use even if the home occupation continued, although this unit was very small.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Ms. Chamberlin made a motion to **grant** the petition for a special exception as presented and advertised. Mr. Durbin seconded the motion.*

Ms. Chamberlin said the applicant met all the standards to grant a special exception for home occupation. She said the use was allowed and there would be no hazard to the public or adjacent properties. She said a digital photography studio did not use chemicals, was quiet, would have only a couple of customers a day and there would be no traffic safety hazards. She said the use would not cause an excessive demand on municipal services, nor would it increase storm water runoff.

Mr. Durbin noted that the special exception was permitted and met all the criteria and the use could be in tandem with residential use, though it was a small space.

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

6) Case # 7-6

Petitioners: Ronald and Carol M. Smith

Property: 32 Taylor Lane

Assessor Plan 250, Lot 40

Zoning District: Single Residence B

Description: Construct 14' x 8' rear deck at end of access ramp.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a rear yard setback of 12'± where 15' is required for an open deck.
2. A Variance from Section 10.521 to allow building coverage of 21.6%± where 20% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Ronald Smith said he appeared before the Board with a request to construct a handicap access ramp in November 2013, but then realized he should have built a deck for his wife who had Parkinson's Syndrome. He said it would improve the appearance of the backyard, the neighbors also had decks and there would be no detriment to the surrounding properties.

Mr. LeMay asked if any there had been any variances in place for the existing structure and Ms. Walker said although a variance was required for a structure higher than 18", the building inspector may have granted a permit because a handicapped access might be exempt.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. LeMay reviewed the criteria, noting that granting the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed because the relief was minimal, no objections from abutters or neighbors had been expressed and there would be no changes to the essential characteristics of the neighborhood. He said substantial justice would be done by allowing enjoyment of the property while not infringing on the light and air of neighboring properties. He said the values of surrounding properties would not be diminished because a simple deck would be in keeping with other decks in the neighborhood. He said literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because the applicants needed a ramp and the house was where it was on a corner lot.

Ms. Chamberlin agreed with Mr. LeMay’s comments.

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

7) Case # 7-7

Petitioner: Daniel P. Keenan, DDS (Domer Realty LLC)

Property: 545 Lafayette Road

Assessor Plan 229, Lot 6

Zoning District: Single Residence B

Description: Add a real estate office in a building currently used for a medical office.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.335 to allow a lawful nonconforming use to be changed to another nonconforming use.
2. A Variance from Section 10.1241 to allow a free-standing sign in a district where free-standing signs are not allowed.
3. A Variance from 10.1281 to allow an existing free-standing sign to be altered or reconstructed.
4. A Variance from Section 10.1251.20 to allow a wall sign that is larger than the maximum allowed for an individual wall sign.

SPEAKING IN FAVOR OF THE PETITION

Mr. Rheaume recused himself and Vice-Chair Parrott informed the public that there were only five voting members and four positive votes were required to pass the request. Dr. Daniel P. Keenan, DDS said he wanted to proceed.

Dr. Keenan said his property was in a residential district, but he was granted a variance in 2003, and the property had been used for businesses for over 20 years. He said he wanted to rent part of his property out to Domer Realty LLC and he wanted to put up new signage for them and for his patients. He said his sign had been there for many years, had deteriorated and needed replacing. He said there would be no impact on the neighborhood, there was plenty of parking and there would be no increase in traffic congestion.

Dr. Keenan reviewed the criteria provided, stating that there would be no hazards to the public. He said the removal of the overpass changed the traffic flow and the entrance had been moved from Lafayette Road to Ledgewood Road and a directional sign would assist in locating the new entrance. Mr. LeMay asked if any patients had difficulty finding his office and Dr. Keenan said they had not, but he wanted the sign to assist them in finding the new entrance.

Mr. Moretti asked if there were any wall signs currently and Dr. Keenan there were not.

Ms. Chamberlin asked if there was any reason a wall sign couldn't conform with the Ordinance and Dr. Keenan said they were on the edge of the commercial zone, but the residential zone did not allow any signs. Ms. Walker said a wall sign of 4 square feet was allowed and Dr. Keenan said this one was bigger.

Vice-Chair Parrott said the problem with wall signs in a residential zone on the edge of a commercial district was that everyone at the edge of a residential district would want to put up signs. He commented that traffic was slow in that area and he did not think finding the office would be a problem. Mr. LeMay agreed. Ms. Walker said a wall sign of a maximum of four square feet was allowed and could be considered.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Vice-Chair Parrott informed the Board that the motion for the special exception could be made separately from the variances and the variances could be taken individually.

*Mr. LeMay made a motion to **grant** the petition for a special exception as presented and advertised. Ms. Chamberlin seconded the motion.*

Mr. LeMay reviewed the standards for granting the special exception, noting that there would be no hazard to the public or adjacent property from fire explosion or release of toxic materials from the proposed office use. He said there would be no change in the essential characteristics of the area from noise, dust or other pollutants that would result in a detriment to property values. He said there would be no changes to the existing traffic that would create more traffic. He said the light office use would not result in any excessive demand on municipal services and there would be no increase in storm water.

Ms. Chamberlin agreed that the traffic and impact on the neighborhood would not change from the use.

*The motion to **grant** the special exception **passed** by a vote of 5-0.*

*Ms. Chamberlin made a motion to **grant** the first three variances as presented and to **deny** the wall sign that was larger than the maximum allowed. Mr. Durbin seconded the motion.*

Ms. Chamberlin reviewed the criteria, noting that granting the variance would not be contrary to the public interest by allowing signage to identify the businesses on the property. She said the spirit of the Ordinance would be observed by allowing the repair of an existing sign and adding a directional sign for the entrance. She said it would do substantial justice to continue the nature of the property. She said there was no indication that it would diminish the value of surrounding properties. She said the special condition was that it was a commercial building in an odd spot and needed a sign.

Ms. Chamberlin said she did not support having a wall sign that was larger than the maximum allowed because there did not seem to be any real reason for it. She said for that reason she would deny the last variance.

Mr. Durbin added that the property had been set up for commercial use, which created a hardship in a residential zone, but the wall sign was too much in addition to the other signs.

*The motion to **grant** variances #1, #2, #3 and **deny** variance #4 **passed** by a vote of 5-0.*

IV. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:15 p.m.

Respectfully submitted,

Jane K. Kendall
Acting Secretary