

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

JULY 21, 2015

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott; Christopher Mulligan, Jeremiah Johnson, David Rheame, Derek Durbin, Patrick Moretti.

MEMBERS EXCUSED: Charles LeMay

ALSO PRESENT: Juliet Walker, Planning Department

Mr. LeMay was excused, and Mr. Johnson assumed a voting seat for the meeting.

I. APPROVAL OF MINUTES

A) June 16, 2015

*The minutes were **approved** with minor corrections by unanimous vote.*

II. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 6-8

Petitioners: Joseph & Lindsey B. Donohue

Property: 336 Union Street

Assessor Plan 134, Lot 58

Zoning District: General Residence A

Description: Convert single family dwelling to two dwelling units.

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 lot area per dwelling unit of 2,178 s.f. ± where 7,500 s.f. is required and a building coverage of 39.3% where 25% is the maximum allowed.
2. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four off-street parking spaces are required.

This petition was postponed from the June meeting and the request has been amended to include building coverage.

SPEAKING IN FAVOR OF THE PETITION

The owners Mr. Joe Donohue and Ms. Lindsey Donohue were present to speak to the petition. Mr. Donohue stated that he wanted to turn his home into two separate dwellings and lease the second unit. The building footprint would remain the same, and the only external construction would be an added door and extended driveway. He stated that all the abutters were in favor and also noted that they would need only two off-street parking spaces instead of the four required by code.

Mr. Durbin asked whether the 436' space was currently being used for an in-law apartment, and Mr. Donohue replied that the space was vacant. Mr. Durbin asked how long the space had been vacant and whether it had been used as an in-law apartment previously. Mr. Donohue replied that he and his wife bought the property the previous summer and didn't know if the space had previously been used as an in-law space. Mr. Durbin asked whether there was a grandfathered use despite the fact that it was a separate dwelling area on the property. Ms. Walker replied that it would not be grandfathered because two-family uses were not allowed in that district, and the previous variance had stipulated that it would not be used as a separate dwelling. Chairman Witham asked Mr. Donohue if he was aware of the restriction when he bought the property, and Mr. Donohue said that he wasn't.

Mr. Rheaume stated that the previous 1997 stipulation required the dwelling to remain as a single residence and felt that it was a high hurdle to overcome. He asked Mr. Donohue whether he could convince him that something had significantly changed since then. Mr. Donohue replied that the neighborhood had changed a lot and had moved toward smaller living units. He had spoken with every neighbor and no one objected to it, so he felt it would have no negative impact on the neighborhood. Mr. Mulligan asked whether the exterior modifications of the structure were to simply add a door to the rear of the addition, and Mr. Donohue agreed, noting that it would be on the corner of Chauncey and Union Streets. Mr. Mulligan noted that there was off-street parking on Chauncey Street as well as access to parking at the garage on Union Street, and he asked whether the addition's total square footage would be less than 500 square feet if it was a separate dwelling, and Mr. Donohue agreed.

**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

Chairman Witham stated that he did not see the hardship involved. He understood how the applicant made his case in terms of renting it and fixing up the house, but there was a variance granted in 1997 with the stipulation that the dwelling would stay as a single-family residence, and he felt that the Board needed to uphold that decision and was not convinced that the neighborhood had changed enough to have a duplex. He was also wary of changing the street parking on a corner lot because the Board would be allowing a 425 s.f unit that was well below the required building code. He realized that the applicants were unaware of that fact when they bought the dwelling, but he felt that it wasn't enough.

Mr. Rheaume stated that he was also torn because the previous stipulation had been specific and was public information. However, he had an interest in seeing the application move forward because the

City had talked about micro housing, and he felt that the petition was a perfect example of it. Mr. Rheume said that he could suggest a stipulation that, if granted, the applicants would come back to update the City Council and the Planning Board on how it went. As far as the parking requirements, it was such a small unit that he thought the renters would most likely have only one vehicle. The petition was asking for a lot in relief in terms of square footage, not even half of the required amount for building coverage, but on the other hand, it was General Residence A.

Chairman Witham stated that he supported micro apartments but assumed that there would be criteria for parking and other issues and that he was wary of single-family homes carving out 425 square feet and putting out only two parking spaces.

Mr. Mulligan stated that the parking relief requested was okay because there was adequate off-street parking in two locations, and the second unit wasn't likely to house someone with more than one vehicle. The sticking point was whether or not the Board should stand on the stipulation that was granted 20 years before to limit the addition to be integrated into a single-family residence. He did not think a two-family residence would alter the essential characteristics of that neighborhood, so he felt that he could approve the petition.

*Mr. Mulligan made a motion to **grant** the variance as presented and advertised. Mr. Rheume seconded the motion.*

Mr. Mulligan stated that the criteria the Board needed to apply was to determine whether or not what was requested would alter the essential characteristic of the neighborhood or threaten its health, safety and welfare, and he didn't see it. There were a number of multiple family dwellings in the vicinity and some unusual structures, and the applicant's home was one of them. He also felt that it could be a forerunner of a micro unit movement. Granting the variance would not be contrary to the public interest or to the spirit of the Ordinance and would result in substantial justice. The loss to the applicant would far outweigh any gain to the public because the gain to the public was 20 years before, when a stipulation was entered that the addition would not be part of a separate dwelling. He felt that there was a good reason or it then, but taking the current application at face value, he didn't see the benefit to holding a hard line on the stipulation that was directed many years before. Granting the variance would not diminish the values of surrounding properties because there were similar residential mixes and uses and he had not heard any complaints. The special conditions of the property that distinguished it from others was that it was a small corner lot and provided parking access on Union and Chauncey Streets and had a small structure that extended almost the entire length of the lot. He did not believe that literal enforcement of the parking requirement would make sense because it would not require two parking spaces. The previous stipulation had no fair and substantial relationship to the property as it was currently situated, and he felt that to hold that stipulation to the applicant would require an extensive refit of the already-existing addition.

Mr. Rheume stated that he echoed Mr. Mulligan's statements and agreed that there were unique aspects to the application. The dwelling was in General Residence A, not in a single-family residential district, and he felt that it gave leeway toward being within the spirit of the Ordinance. A lot had changed in the past 20 years, and the way that the original property was constructed lent itself more to the reuse and repurposing as opposed to some other way, like over a garage unit, which would be less

amenable. There were specific aspects to the application that made it more palatable than perhaps some future applications.

Vice-Chair Parrott stated that the lot was only 4,356 square feet, which was substantially below the requirement of 7,500 square feet. He felt that if the lot was vacant, it would be unlikely that the project would get approved, and just because the lot was in a developed area didn't mean that the requirements were not meant to be followed. In respect to hardship, he did not find any hardship that made sense to him other than the applicant wanted to do it. He was also concerned about the requirement for two vehicles per unit because, even though the apartment was very small, there was a 50-50 chance that two people with two vehicles would live there, which would place another vehicle on the street. For all those reasons, the argument to him was not sustainable.

Chairman Witham stated that he would not support the motion because the property was granted a variance to have more than 50% lot coverage than what was allowed to build the structure that was essentially an apartment, and he didn't see it as a hardship. He also had concerns about the potential four vehicles for a small house on a small corner lot.

The motion was denied, 4-3.

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 7-1

Petitioners: Kristen J. Campbell

Property: 31 Cabot Street

Assessor Plan 136, Lot 40

Zoning District: Mixed Residential Office

Description: Replace existing porch and stairs.

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 or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard of 7'6" and a right side yard of 6'6" where 10' is the minimum required and a building coverage of 43% where 40% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. Kristen Campbell was present to speak to the petition and briefly discussed her project. She also passed out a sheet that explained why she thought her petition met all the criteria.

Mr. Rheame stated that it was a substantial change from what was previously provided to the Board and felt that it was a significant increase. He asked Ms. Campbell how she had identified the changes. Ms. Campbell replied that she measured things and had help from Ms. Walker. Mr. Rheame stated that he was familiar with the house and asked Ms. Walker why the property needed a variance if it was

a replacement in kind. Ms. Walker replied that if the porch was dilapidated, the Board may have allowed it, but since the porch had already been removed, they had to follow procedure.

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. Moretti made a motion to **grant** the variance as presented and advertised. Vice-Chair Parrott seconded the motion.*

Mr. Moretti stated that granting the variance would not be contrary to the public interest. The rear porch was in a dilapidated condition and needed replacement, and the only reason that the Board was seeing the application was because the porch had already been removed prior to inspection. Granting the variance would observe the spirit of the Ordinance, which was in play only because the porch was removed prior to inspection. It would do substantial justice because it would allow the homeowner to bring the house back up to code, with a studier porch and a better roof. Granting the variance would not diminish the value of surrounding properties because the petition would improve the house and bring its value up as well as the houses surrounding it. As for hardship, Mr. Moretti stated that it was a dilapidated porch, and if it had not been removed, the Board would not be hearing the case.

Vice-Chair Parrott stated that he concurred with Mr. Moretti and had nothing to add.

*The motion **passed** with all in favor, 7-0.*

2) Case # 7-2

Petitioners: Alyssa and Andrew Ervin

Property: 192 Park Street

Assessor Plan 149, Lot 53

Zoning District: General Residence A

Description: Construct a porch on the left side and a 2-story rear addition.

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 or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard of 2' and a right side yard of 9' where 10' is the minimum required and a building coverage of 26.5% where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The project designer Ms. Amy Dutton representing the owners was present to speak to the petition. She stated that she submitted the application in March but had spoken with some neighbors who had concerns about where the addition would go, so she redesigned the project. She discussed how the backyard aligned with the yards of other neighbors and the fact that there was an existing non-conforming garage. The redesign addressed the non-conformance of the existing house as well. She discussed how the existing house was very low, making it necessary to extend the footprint in order to achieve the number of required bedrooms. She also discussed how the front porch figured into the lot coverage. She stated that the petition met all criteria. Ms. Dutton said the applicants would lose the function of the family room with bedrooms above it if they complied with the setbacks. They would replace the 2-car garage with a 1-car garage and would step off the property line by one foot. She said that the most-affected neighbors felt that the second design was better.

Mr. Rheume asked whether the addition would double the amount of square footage in the house, and Ms. Dutton replied that the addition square footage was 258 square feet. Mr. Rheume stated that he spent some time wandering through the neighborhood and looking at homes on Mendon and Orchard Streets to get a sense of how the project would fit in. He noted that there were a fair number of larger properties but that surrounding homes tended to be smaller. His main concern was the expansion toward the neighbor because the 2' setback relief over the garage was the most imposing height-wise relative to that neighbor and he had not seen other examples of it. He asked Ms. Dutton whether she knew of other examples that would support the bedroom above a garage at a story and a half. Ms. Dutton stated that she had worked with the neighbors and was trying to squeeze as much as possible into a smaller area to get the master bedroom over the garage. Mr. Rheume noted that a criteria was to keep with the characteristics of the neighborhood, and a lot of the neighborhood's architecture was unique and didn't lend itself to addition, so he did not want to over-impose on the neighborhood. Ms. Dutton mentioned a nearby similar design.

Chairman Witham agreed with Mr. Rheume and asked whether or not the Board could accept the fact that Portsmouth now had several homes with additions that were larger than the house itself, volume-wise. In terms of the setbacks, he felt that there would be improvements because the existing garage was on the property line, so it would afford some relief, but he still felt that the addition was substantial and had a lot of mass. He had no issue with the 9'7" setback. Ms. Dutton further discussed what they went through to keep the mass down.

The owner Mr. Ervin rose to speak and stated that he and his wife had worked closely with their neighbors to come up with the best solution, and they all believed it was the best option.

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 stated that his main concern was the size and mass of the addition with the garage, and he knew the Board worked hard to preserve the feel of the neighborhood because it was a unique area with some wonderful architecture. He sympathized with the owners because the house was small for a

family of five, and they kept it as a 1-1/2 story rather than a 2-story and had also worked with their neighbors. He said that he could live with the mass of the garage and could support the home being the size and mass that it was, and the fact that the owners were going to a single garage and that what they were doing overall was restrained helped sell him on approving the petition.

*Mr. Rheume made a motion to **grant** the variance as presented and advertised. Mr. Mulligan seconded the motion.*

Mr. Rheume stated that granting the variance would not be contrary to the public interest and noted what he had said about the nature of the neighborhood. The other homes were smaller and the applicant's house seemed much larger because it started out as a small home. Granting the variance would observe the spirit of the Ordinance because there was very little relief on the inside of the house and more relief on the garage, but the applicant would demolish an existing garage and bring it back as a more conforming one. They were adding more height but had worked it out with the neighbors. Granting the variance would do substantial justice because it would allow the owners to accommodate their growing family and make full use of the property. The lot was large enough and the amount of variance in square footage was rather small. It would not diminish the value of surrounding properties because there was a general increase in size but the applicants had done a lot of work, and the value they put in should increase the value of their home and surrounding properties. As for the hardship test, the driveway on one side dictated the garage, and the property was a long and narrow one, so those aspects created the design challenge for which the architect had come up with a solution that met the Board's criteria. He recommended approval.

Mr. Mulligan stated that he concurred with Mr. Rheume and reinforced the fact that other potential solutions available to the applicant were either building up so that the existing house would be much taller, or building out into the backyard, which would compromise a lot of usable space. Neither one was a good solution. What was proposed was an elegant design that would eliminate a little of the existing non-conformity on the lot. There was also broad support in the neighborhood, so he felt that the Board should support the application.

*The motion **passed** with all in favor, 7-0.*

3) Case # 7-3

Petitioner: Debora A. Panebianco

Property: 306 Oriental Gardens

Assessor Plan 215, Lot 9-9

Zoning District: Office Research

Description: Place a new manufactured home on an existing concrete slab.

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

1. A Variance from Section 10.440 to allow a manufactured home in a district where this use is not allowed.

SPEAKING IN FAVOR OF THE PETITION

The manager Ms. Deborah Panebianco was present to speak to the application. She stated that she upgraded the electrical, which the Building Inspector had approved. Due to the recession, she could not sell a new mobile home for the lot, so she had not placed one on the lot at the time. She said that she had copies of the current slab and was requesting a variance to approve the mobile home. The existing lot had had a mobile home on it before, and the park had been in existence for over 40 years.

Mr. Mulligan asked Ms. Panebianco whether she was proposing to place a new 14'x66' manufactured unit and if so, whether it would be a fixed unit tied into existing utilities, and Ms. Panebianco agreed. He asked how big the removed unit was, and she replied that it was 12'x63'.

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. Mulligan made a motion to **grant** the variance as presented and advertised. Vice-Chair Parrott seconded the motion.*

Mr. Mulligan stated that what was proposed was to utilize an existing lot within a manufactured facility, and the only reason a variance was needed was because the district was zoned for office research. Granting the variance would not be contrary to the public interest or to the spirit of the Ordinance, and the essential characteristics of the neighborhood would stay the same, a manufactured housing park. The health, safety and welfare were not threatened because in the past, there was a manufactured housing unit, which would just be continued. It would result in substantial justice because the gain to the public if denied would not outweigh the loss to the applicant. The applicant would be stuck with a slab and nothing to do with it, and no other uses were permitted in the office research zone. Granting the variance would not diminish the value of surrounding properties but would improve them. A newly-constructed manufactured home would go on the site and improve the values of the other units. It was a single lot within a manufactured housing facility that was not appropriate for any other uses permitted in the office research zone. It was the only use that would fit, so there were special conditions that distinguished the property from abutting ones. The use was a reasonable one because the lot had been used in that fashion in the past. It met the unnecessary hardship test as well as all the other requirements.

Vice-Chair Parrott concurred with Mr. Mulligan and stated that it was an obvious replacement in kind, except that it would be a new unit in better condition and much closer to meeting all the current codes. It would be an upgrade and continuation of a long-standing accepted use, so he felt that the Board could approve it.

*The motion **passed** with all in favor, 7-0.*

-
- 4) Case # 7-4
Petitioner: Laurie J. Harrigan Revo Trust

Property: 116 Sherburne Avenue

Assessor Plan 112, Lot 37

Zoning District: Single Residence B

Description: Construct 1 ½ story addition at rear of existing residence with new side entry deck and rear deck.

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 or structurally altered without conforming to the requirements of the Ordinance.

1. A Variance from Section 10.521 to allow a building coverage of 27.1% where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The project architect Ms. Anne Whitney was present to speak to the application. She distributed a list of abutters who approved the project. Ms. Whitney stated that the project had been before the Board the previous November and was denied, so she had decreased the square footage and met the setbacks. She brought the addition up to the main floor level but had to create landings and decks for access, so most of the square footage over the 25% constituted the entry deck on the side and a small rear deck. The lot was undersized and they reduced the size of the addition while still maintaining the original intent. They also expanded the existing kitchen into the addition and created a new entry off the side. One of the Board's previous concerns was that the addition blocked views of an abutter, and she distributed copies of the tax map noting the addition's dimensions and the distance from the abutter.

Mr. Rheume asked Ms. Walker why open space coverage was listed as 'TBD' on the staff report, and Ms. Walker said it was because it wasn't provided by the applicant and that it would need to be provided before the building permit could be issued. Mr. Johnson asked Ms. Whitney to explain the ramp, and she said it would be metal with a non-slippery coating, and it would not be a permanent structure. Mr. Rheume verified that the ramp had not been included in the application before.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Maxine Feintuch of 180 Lincoln Avenue stated that she was an abutter and that the project affected her property. Ms. Harrigan's backyard shared a 30' border of open space with her backyard, and expanding the back of her house beyond the allowable limit impacted her. Due to the location of their houses, the proposal closed in her property at the rear and changed the site line, which would limit her privacy, quiet and light. She said it was a revised plan but still had aspects that affected her. The width and length were reduced, but a 6' deck was added. The height was raised, causing an increase in mass, and the proposed addition without the decks and front porch was still larger than the original footprint. Ms. Feintuch believed that her property's value would be affected.

Ms. Whitney clarified that the structure was close to 60 feet away from the addition and they had met the setbacks. The roof mass was 18" lower, even though the floor level was brought up, so the height of the addition was 18" shorter than originally presented.

The owner Ms. Laurie Harrigan stated that she had done everything she could to shorten the length of the addition by 2 feet, had brought the height down by 1 foot, and pulled the setback on the neighbor's side by an additional foot. She noted that nearby homes had additions that blocked her view and that Ms. Feintuch already had a house that blocked her view, so it seemed unjust to her. She could not go up anymore and needed single-floor living.

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

With no one else rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham stated that he had voted against it the last time and felt that the current changes addressed his concerns, so he could support the redesign. The lot coverage was consistent if not low for the neighborhood, and if they made the building 3' less wide, it would still have the same impact on the abutter.

*Mr. Durbin made a motion to **grant** the variance as presented and advertised. Mr. Rheaume seconded the motion.*

Mr. Durbin stated that they were dealing with 2.1% over the building coverage variance, and that it was a redesigned project that they had previously denied. The rear addition was to accommodate an increase in occupancy and their particular needs. The project had been reduced from before, which was one of the reasons they had previously denied it. Granting the variance would be within the public interest and the spirit of the Ordinance. Light, air and space between surrounding properties would be protected, and the addition would be consistent with the general characteristics of the neighborhood and consistent with their lot coverage. He didn't believe that the value of surrounding properties would be diminished because the project was a tasteful design that would blend in well. Granting the variance would do substantial justice because the detriment to the applicant outweighed a perceived public benefit. Mr. Durbin thought a hardship justified the granting because the lot was small for the area it was in, and there was no fair and substantial relationship between the general purpose of the Ordinance and the applicant. The proposed use was a reasonable one.

Mr. Rheaume stated that he concurred with Mr. Durbin and felt that it was a fully-conforming addition. The homeowner could have made it shorter and much taller. As far as the abutter's point about the size and location, the applicant was taking 2.1% above what she was fully allowed, which equaled 117 square feet. The homeowner could have built the addition and torn down the front porch without coming before the Board, and that gave an idea of the relief that the applicant was requesting. Mr. Rheaume stated that the applicant fully met the spirit of the Ordinance and that there was demonstrated hardship.

*The motion **passed** with all in favor, 7-0.*

Petitioner: Algene and Sheila Bailey, Jr.

Property: 487 Ocean Road

Assessor Plan 283, Lot 33

Zoning District: Single Residence A

Description: Construct new front door overhang, attached 16' x 32' garage and 13' x 6' front deck, and 16' x 20' shed in backyard.

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 right side yard of 10' where a minimum of 20' is required and a building coverage of 26.6% where 10% is the maximum allowed.
2. A Variance from Section 10.573.20 to allow a left side yard of 6' where 10' is the minimum required for an accessory structure.

SPEAKING IN FAVOR OF THE PETITION

The owner Mr. Bailey was present to speak to the petition and stated that he and his wife had just bought the property and needed a shed and a garage. He said that he noted the wrong square footage area, so he had provided an addendum. Mr. Bailey went through his petition, stating that the garage would leave a 10-ft area to the right, close to his neighbor. The setbacks on the back were the same as the existing family room at 23 feet. He originally proposed a 16x24' shed but realized that a 12x16' shed would work. The shed would face the property on the right and would have a smaller footprint. He noted that all his neighbors were supportive.

Chairman Witham asked about the front entry porch. Mr. Bailey stated that the existing porch had five steps and no overhang, so he would put a roof on top of the landing. The 6'x15' deck would face the street. Chairman Witham stated that the only significant change was the shed's dimensions.

Mr. Dick Kent of 489 Ocean Road stated that he was adjacent to the proposed garage and had no objection to the 10-ft requirement. He said Mr. Bailey had made beautiful improvements to the property and explained how the property lines had been determined. He noted that one of his concerns had been the size of the shed, but Mr. Bailey reduced it. The distance from the property line and the septic tank were fine, and the back and left property lines were within the limits of the Ordinance.

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

Chairman Witham stated that the lot coverage proposed was actually 21.53%, as opposed to the advertised lot coverage at 26.6%, and that it was a rear setback of 8 feet as opposed to a left side setback of 6 feet. Ms. Walker stated that the legal notice was in error. The Board further discussed the error and revised building coverage. Chairman Witham stated that the Board could approve the

dimensions of the addition as provided by the applicant and Ms. Walker would confirm the lot coverage.

*Mr. Rheume made a motion to **grant** the variance as presented and advertised, with the following two stipulations:*

- 1) that there be a 8-foot rear yard setback; and*
- 2) that the Planning Department would determine the building coverage based on the revised dimensions provided by the applicant.*

Mr. Johnson seconded the motion.

Mr. Rheume stated that, at first, it appeared to be a lot of relief requested, but the lots in the neighborhood looked more like those in the Single Residence B district, which required a **15,000 s.f. lot** area, and the application still fell short, with only 10,000 s.f.. The zoning district would require 10% building coverage, and the relief was less egregious than he at first thought. Mr. Rheume stated that granting the variance would not be contrary to the public interest because that sort of improvement with an attached garage was common, and the fact that it had to be moved quite a bit closer to the property line made the overall setback not egregious. The small front deck addition was minimal, and the size of the shed was smaller and more reasonable than the one that was originally requested and it was fully within the scope of the public interest. It would observe the spirit of the Ordinance because it would meet the neighborhood's zoning requirements more closely. Granting the variance would allow the applicants to make full use of their property and would not diminish the value of surrounding properties. A lot of improvements had been made and would continue to be made. The hardship was that the lot was much smaller than what the zoning called for and was smaller than the neighbors' lots. The houses were all placed in the center of the lots, so any addition to the house would have to encroach on the side lines. Mr. Rheume felt that what was being requested was reasonable, and no public interest would outweigh it.

Mr. Johnson concurred with Mr. Rheume and said that he had nothing to add.

*The motion **passed** with all in favor, 7-0.*

6) Case # 7-6

Petitioner: Portsmouth Land Acquisition, LLC

Property: 428 Route 1 By-Pass (Building 2)

Assessor Plan 172, Lot 1

Zoning District: Industrial

Description: Allow dog daycare and boarding facility with associated parking.

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

1. A Variance from Section 10.440 to allow a dog daycare and boarding facility in a district where this use is not permitted.
- 2.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. Amanda Field stated that she had been in business since 2007 and currently had locations in Hampton and Exeter. Some of their clients came from Portsmouth because there was no dog daycare in the City, and she was eager to bring the service to Portsmouth because there was a need for it. She said that the building was in an industrial-use area that could change in the future but would not affect her building. Her two facilities were open from 6 a.m. to 7 p.m. Mondays through Fridays, and that the one in Portsmouth might be open longer because it was near the hospital where the employees had 12-hour shifts. On weekends, it was open from 7 a.m. to 6 p.m. She emphasized that it was a crate-less daycare and the dogs were put in 4-6 groups all day long, with indoor and outside access. There were also bay doors leading to 4-6 play areas.

Chairman Witham asked Ms. Field if the site needed dirt or grass, and Ms. Field replied that there was AstroTurf, which was easy to clean. Mr. Rheume asked Ms. Field whether she had a boarding capacity. Ms. Field said that, because they didn't crate, the dogs could play all day and retire to a cabin when they were tired, and she wasn't sure how many could fit comfortably into a cabin. Mr. Rheume asked whether or not she had a business plan to support her numbers, and Ms. Field replied that they currently took care of 50-60 dogs at the Hampton facility. She noted that the hours varied, ranging from a whole day to a few hours, and that they also offered half-day rates.

Mr. Rheume asked whether or not the Portsmouth facility would be within that range, and Ms. Field agreed that it would likely. He asked if the outdoor area was set up toward the Frank Jones property or away from it, and Ms. Fields said that it was on the back side and close to the railroad tracks and would not affect parking. Mr. Rheume then asked Ms. Walker whether or not the variance would require it for the Gateway District, and Ms. Walker replied that it was not allowed in any district.

Chairman Witham asked whether there were residential units on the other side of the tracks and if there were noise issues. Ms. Field replied that in Hampton, they were surrounded by residential homes, and the dogs did not bark or disturb the peace because they were always supervised. Vice-Chair Parrott asked whether the State had regulations for that industry or any State license or permit, and Ms. Field replied that it wasn't regulated by the State and that they required no State license or permit. She noted that all the dogs were required to have updated shots and be registered.

Mr. Rheume asked if there was a plan for business signage, and Ms. Fields replied that there was current signage on the street but wasn't sure what the building owner would allow.

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 made a motion to **grant** the variance as presented and advertised. Mr. Mulligan seconded the motion.*

Vice-Chair Parrott stated that the application was a bit unusual but straightforward. It was an existing facility that would have minor if any modifications that would be of no concern to the public, so

granting the variance would not be contrary to the public interest. It would observe the spirit of the Ordinance because the Ordinance was quiet on that kind of site, and it had no parking requirements because it was new and uncovered territory as far as the City Ordinance went. Granting the variance would do substantial justice because there was no overriding public interest at all, seeing that it was a back building on a busy street and there was a heavy commercial area adjacent to a railroad track. It would not diminish the value of surrounding properties because the facility was of a commercial nature, in respect to the other side of the railroad tracks, and was buffered by the track embankments. The other buildings on the property were subject to redevelopment and not currently being used. As to the hardship test and special conditions, the use was not recognized in the Ordinance, so it was unusual. Granting the variance would provide no fair and substantial relationship between the general public purposes and the Ordinance because the Ordinance didn't deal with it anyway, so it wasn't likely to create a nuisance for the neighbors. He felt that the application met all the criteria.

Mr. Mulligan stated that the proposed usage would require a variance anywhere, and that it was a use that the public would benefit from. Other communities enjoyed facilities like it. The fact that the applicant was seeking to adapt a vacant building in a sea of asphalt was positive, and he thought that there were special conditions of the property, given that it was sited in asphalt and adjacent to the railroad tracks. There was no fair and substantial relationship between the allowed uses in the industrial zone and the property, and he felt that it was an appropriate place for the facility.

*The motion **passed** with all in favor, 7-0.*

IV. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 9:00 p.m.*

Respectfully submitted,

Joann Breault
Recording Secretary