

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

7:00 P.M.

October 20, 2015

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, David Rheame, Derek Durbin, Charles LeMay, Patrick Moretti, Jeremiah Johnson

MEMBERS EXCUSED: Christopher Mulligan

ALSO PRESENT: Planning Department: Juliet Walker

Mr. Mulligan was excused, and Mr. Johnson assumed a voting seat for the meeting. Chairman Witham also noted that Mr. Durbin would be late.

I. APPROVAL OF MINUTES

- A) September 15, 2015
- B) September 22, 2015

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

II. OLD BUSINESS

- A) Request for Clarification of Variances for property located at 244 Austin Street.

SPEAKING IN FAVOR OF THE PETITION

Mr. Joseph Russell on behalf of the applicant stated that the request had to do with the right side setback, which was listed as 3 feet at the December 2014 hearing. The existing footprint of the house measured 2'6" ±, and he felt that the applicant should be allowed to build on the existing footprint and that the 6" ± was acceptable.

**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 variance. Mr. Johnson seconded the motion.*

Mr. Rheume said he recalled that, because the property was unique with a lot of neighborhood support, the Board had granted approval even though it had significant setback requirements. He felt that the additional 6" ± was probably not significant relative to the overall application, and it followed the intent of what had been originally presented.

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

*The motion **passed** with all in favor, 6-0.*

III. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 9-6

Petitioner: Unitarian Universalist Church

Property: 206 Court Street

Assessor Plan 116, Lot 34

Zoning District: Character District 4-L1

Description: Construction of an addition with related parking.

Requests: Amend previously advertised requests as follows:

1. A Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly and educational uses where the uses are only allowed by Special Exception.
2. Variances from Section 10.5A41.10A to allow the following:
 - a) A 3'± right side yard setback where a minimum 5' setback is required.
 - b) A 3'± left side yard setback where a minimum 5' setback is required.
 - c) Building coverage of 68.7%± where 60% is the maximum allowed.
 - d) Open Space of 21.3%± where 25% is required.
3. A Variance from Section 10.1112.30 to allow no off-street parking spaces to be provided where 53 parking spaces are required.

This petition was postponed from the September 22, 2015 meeting and amended.

Mr. Johnson recused himself from the discussion.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen on behalf of the applicant introduced his project team that included Mr. Steve McHenry of McHenry Architects and discussed the addition, noting that the old building needed renovations. He stated that the parking area would be converted to green space and that the building usage would remain the same. He described what each of the three floors would encompass and also noted the following four stipulations that the abutters had agreed with:

- 1) The church would tie into the City's sewer line;
- 2) The addition would be constructed with brick veneer;

- 3) The addition would conform to the architectural submissions in the packet; and
- 4) The fences between the properties would be no greater than 4 feet in height and the church would take care of the maintenance and related issues.

Mr. Rheume stated that a few things had changed from the original submission. The addition on the back had gone from a 1” setback to a 3” one and had been expanded toward the back. The original application asked for 1,019 square feet per floor and the new application asked for 1,095 square feet, and in both cases they were larger than the existing footprint. He asked Attorney Bosen whether a design standpoint prevented compliance with the setback requirement. Mr. McHenry stated that the floor plan had space that was taken up by two code-compliant staircases as well as bathrooms and so on, all of which squeezed down usable areas for spaces. Mr. Rheume then addressed the parking requirement, noting that the proposed addition was larger on each floor and that the number of people using each floor was a substantial increase. He felt that the applicant’s argument for the parking need was the same as before, even with the increased capability. Attorney Bosen replied that the increased space was meant to accommodate the existing congregation. Mr. Rheume asked whether the addition could be smaller, and Attorney Bosen said that the building would be mostly used on Sundays but felt that the design made the most sense because of the needed renovations and to prevent them from having to go to another location.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Terry Baker stated that he was the owner of Baker-Wright Auto and was the right side abutter. He opposed the petition because of the parking, size and scale, construction, and traffic and felt he would be denied access to his property because his lot was too convenient for others to use. He also thought the 3-story apartment building would be made into something substantially bigger and would be too close to his property line.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Jack McGee of 303 O’leary Place stated that he and his wife were the owners of 222 Court Street, which was to the left of the project. He said they would not oppose the request if the four stipulations that Attorney Bosen had mentioned were followed.

Mr. Mike McGraw, President of the Board of Trustees, said a lot of people would be using the facility and would cause a different distribution in the new building. They would not be able to have religious education for the children unless the space was expanded. He noted that the education classes would occur during off-peak hours.

Ms. Walker stated that the applicant would have to comply with the 25% open space coverage.

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

DECISION OF THE BOARD

Mr. Rheume motioned for discussion. He felt that the applicant was asking for a pretty large addition to what was presently a quaint structure, for the reason that the interior

arrangement might not be suitable for the applicant's purposes. The requested relief for parking was not very substantial, but he thought it was a significant intensification of the use of the property. He emphasized that the church was across the street from the downtown overlay district but was also in a transitional area consisting of smaller structures.

Chairman Witham said he had concerns with the original 1' setbacks but was more comfortable with the 3' setbacks. Since many of the buildings hugged the property line, he didn't think the essential characteristics of the neighborhood would be changed. The design was tasteful and he didn't feel that the addition was overwhelming. He was comfortable with the parking because it was tied into the location. Mr. LeMay stated that the church staff would have to find a place to park, but the positive aspect was that it would be in off-hours on evenings and weekends due to the nature of the organization. He thought the parking impact was mitigated unless it went to some other use in that location.

*Mr. Rheume made a motion to **grant the Special Exception**, and Vice-Chair Parrott seconded the motion.*

Mr. Rheume stated that the Special Exception was more straightforward because the building was currently used for religious assembly and would stay in that vein. It was also allowed by Special Exception in the Zoning district. Granting the Special Exception would pose no hazard to the public or the adjacent properties and no detriment to property values and it would not change the essential characteristics of the area because it mostly had to do with the existing use and would not change substantially. There would be no traffic safety hazards or congestion because the parking would be separate from the issue. The issue of letting handicapped passengers off was a minor concern because it could be done across the street. Granting the Special Exception would also place no excessive demand on municipal services and no significant increase in storm water runoff because the Downtown area was already congested and had a lot of impervious surface.

Vice-Chair Parrott said he concurred with Mr. Rheume and had nothing to add.

*The motion to grant the Special Exception **passed** with all in favor, 5-0.*

*Mr. LeMay made a motion to **grant** the variances as presented and advertised.*

Vice-Chair Parrott seconded the motion and requested the following stipulation:

- 1) that the church take the initiative to work with the Baker-Wright Company and actively pursue the policy of ensuring that the church did not impinge on the parking space of the Baker-Wright Company.*

Mr. LeMay agreed to the stipulation.

Mr. LeMay stated that it was a tight request on the lot but was not as if the space gave a lot of light and air for the abutters and it was pretty boxed in. Granting the variances would not be contrary to the spirit and intent of the Ordinance or contrary to the public interest, because it would not substantially alter the character of the neighborhood or threaten the public's health, safety or welfare. The existing lot was developed, had wall-to-wall coverage of the lot, and tended to fit in. It was also an off-hours use and there would not be

a lot of pedestrian-crossing traffic. Substantial justice would be done because the gain to the public from not granting the variances would be less than the applicant's because it wasn't like they were taking a parking lot and filling it up and it also wasn't like there was usable space that was otherwise available for public use. He felt that the balance test was met. Granting the variances would not diminish the value of surrounding properties due to the special conditions of the property. The size and siting of lots in that area were such that it justified its keep a bit, and he thought the violation of the setback was important to the project because of the impact of the accessible space, and it was a reasonable use. Mr. LeMay concluded that there was no fair and substantial relationship between the purpose of the Ordinance as applied to the property because there wasn't much parking there presently and it was close to a zone that had some other available parking, which is why it had zero requirements.

Vice-Chair Parrott said that he concurred with Mr. LeMay and had nothing to add.

Mr. Rheume stated that he would not support the motion due to his concern about the size of the addition and the difficulty in finding parking in the area during the week. He felt that it would be intensive use of the transition area. Chairman Witham said he would support it because the floor plan and the amount of space taken up by the compliant egresses ate up a large amount of the floor space. He also felt that part of the criteria reflected the Master Plan and thought it was important to let the church have the facilities they needed, and he noted that the Board had granted previous similar Special Exceptions.

Attorney Bosen rose and reminded Chairman Witham about the four stipulations from the abutters that were listed in the application. Chairman Witham then noted that the applicant's four stipulations were part of the application, in addition to the Board's stipulation.

*The motion to grant the variances **passed**, with 4 in favor and Mr. Rheume against.*

IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case #10-1

Petitioner: Shirley W. Scarponi Trust, Shirley W. Scarponi, Trustee

Property: 276 Melbourne Street

Assessor Plan 233, Lot 84

Zoning District: Single Residence B

Description: Construct screened in porch on extended 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 building to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a rear yard setback of 5'± where 30' is required.

Mr. Johnson resumed his voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Frank Quinn on behalf of the applicant passed out a letter of support from Ms. Marybeth Savage, the abutter to the right of the property, and went through the criteria, stating that both variances met them.

Mr. Moretti asked if there was a second egress, and Attorney Quinn said there was one egress to the garage and one to the front of the house. Mr. Moretti asked whether there was any intention to put stairs back on the screen porch, and Attorney Quinn said there was not.

**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 variances as presented and advertised, and Vice-Chair Parrott seconded the motion.*

Mr. Moretti stated that the applicant requested a moderate adjustment to a nonconforming deck. He would not change the current left setback, and extending the deck would gain space for the screen porch, so he felt that it was a mild infringement. Mr. Moretti stated that granting the variances would not be contrary to the public interest because the rear property abutted the apartment buildings and was hidden by trees. It would be within the spirit of the Ordinance and would not impact the neighborhood. He noted that the most impacted abutter gave a letter of approval and there was no additional impact on anyone else. Granting the variances would allow substantial justice because there was nothing unusual in the petition and it improved the property and allowed it to be used for three seasons. It would not diminish the value of surrounding properties because it would be an improvement to the house and the neighboring houses would benefit. The hardship was that it was a strange lot close to the rear setback already, and the deck already existed. The stairway covered up the space that the additional deck would cover, so the hardship was making it work.

Vice-Chair Parrott stated that he concurred with Mr. Moretti and agreed that it was an odd lot with an odd siting, and the house had an odd siting on the lot as well. He felt that there were very few options to enlarge the porch, which was a reasonable request.

*The motion **passed** with all in favor, 6-0.*

2) Case #10-2

Petitioner: Dozier Revocable Living Trust, Richard M. Dozier, Trustee

Property: 100 Peverly Hill Road

Assessor Plan 243, Lot 51

Zoning District: Single Residence B

Description: Two-family dwelling on lot.

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

2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 4,800± s.f. where 7,500 s.f. per dwelling unit is required.

3) Case #10-3

Petitioner: Wayne Semprini

Property: 1 Fairview Drive

Assessor Plan 219, Lot 26

Zoning District: Single Residence B

Description: Subdivide single lot into two lots.

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 Lot 1 to have 79.97± s.f. of continuous street frontage where 100' is required.
2. A Variance from Section 10.521 to allow Lot 2 to have 14,052± s.f. of lot area where 15,000 s.f. of lot area is required.

Chairman Witham gave the applicant the option of postponing the petition to the next meeting because only five Board members were present and Mr. Johnson had to recuse himself, leaving only four members.

Attorney Bernie Pelech representing the applicant agreed to postpone the petition.

DECISION OF THE BOARD

Vice-Chair Parrott made a motion to postpone the application to a future meeting, and Mr. LeMay seconded the motion.

The motion passed with all in favor, 5-0.

4) Case #10-4

Petitioner: Colmax Revocable Trust of 2011, Paul R. & Rosa Z. Delisle, Trustees

Applicant: Kathryn Freda

Property: 135 C Market Street

Assessor Plan 106, Lot 34C

Zoning District: CD5 and Downtown Overlay District

Description: Convert second floor office to residential dwelling.

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

1. A Variance from Section 10.1111.10 to allow a change of use without providing the required off-street parking.

2. A Variance from Section 10.1115.20 to allow no off-street parking spaces to be provided where two parking spaces are required.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kathryn Freda was present to speak to the petition and went through the criteria, saying that the variances meet them all.

Mr. Rheume asked Ms. Freda whether she was leasing parking elsewhere, and Ms. Freda replied that she would lease parking at the Hanover Garage.

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 variances as presented and advertised, and Vice-Chair Parrott seconded the motion.*

Mr. Rheume stated that the request was modest and the applicant would look for leased parking. He felt that the existing use took up more parking than the proposed use, and due to the new construction, some provision for parking within that structure was needed. He also thought it would add value to the development.

Mr. Rheume stated that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because there would be no change to the building's exterior and, although the parking requirement was for two cars, the City wanted new developments to get parking and it would decrease the parking burden on the Downtown area. Granting the variances would allow substantial justice because it would allow the owner to convert it to a use that worked for her needs, and no public interest would outweigh it. It would not diminish surrounding properties. As for the hardship test, there were unique conditions to the property because it was an old structure surrounded by an area with no possibility of onsite parking, and nearby buildings also had no parking.

Vice-Chair Parrott stated that he concurred with Mr. Rheume and thought it was likely that the total demand on parking would be less, and he was in favor with what the City was trying to do with parking.

*The motion **passed** with all in favor, 6-0.*

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- 5) Case #10-5
Petitioner: St. Nicholas Greek Orthodox Church
Property: Ledgewood Drive (off Lafayette Road)
Assessor Plan 229, Lot 6A

Zoning District: Single Residence B

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

1. A Variance from Section 10.440, Use #1.43 to allow a multi-family dwelling in a district where this use is not allowed.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,142.5± s.f. where 15,000 s.f. per dwelling unit is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Jim Noucas representing the applicant was present to speak to the petition and introduced members of his team. Attorney Noucas said he wanted to create affordable housing, and he discussed the neighborhood and the special conditions of the property. He showed a diagram indicating the back edge of the property and the single family abutter, noting that a buffer zone could be established. He emphasized that they were in a multiple housing gateway zone and not a single-family one that they had been zoned into.

Vice-Chair Parrott asked what the legal status of the berm on the easterly side of property was and whether it was man-made, and Attorney Noucas said he wasn't aware of any wetlands and thought the berm would have to be removed. Attorney Noucas said there had been dumping on the property before they acquired it in the 1990s, so the berm was probably man-made. Vice-Chair Parrott reminded Attorney Noucas that he had had said it was a multi-family and commercial area, which he thought would be a surprise to people who lived on Artwill Avenue in single-family houses. Attorney Noucas replied that LedgeWood Road had 150 apartments and that he was in a slot where it was either commercial activity or multiple-family homes, which was the special condition and character of the neighborhood. Vice-Chair Parrott pointed out the neighborhood on the Zoning map, which was Single Residence B (SRB). They further discussed the issue.

Mr. Rheume noted that there was a history of the church owning the property and asked how the applicant got it. Attorney Noucas said the property was available in the 1980s and they had bought it as future investment property for the church. Mr. Rheume asked whether it was a single residence district then, and Attorney Noucas replied that it was probably not developable at that time. Mr. Johnson asked Attorney Noucas how he would target the rental price range, seeing that he referenced affordable housing terminology. Attorney Noucas said it was a State definition and that there would be specific formula.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Christopher Chase of 34 Artwill Avenue stated that he and his wife were abutters and owners of a single-family home. They were concerned with the proposed use in their backyard that they felt was a different use from what was originally planned and felt that it would also change the character of the neighborhood.

An abutter from 116 LedgeWood Drive stated that the proposed area was a heavily-wooded one and had always been a buffer between the neighborhood and the activities of the church. He believed that removing all the trees for the building would change the character of the

neighborhood. He also noted that Ledgewood Drive and Lafayette Road had an aggressive intersection that would pose more problems if many new tenants were added to it.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

Vice-Chair Parrott moved for discussion and referenced the Zoning map that showed that the area was zoned SRB and was a compact area of similar-sized lots. He explained why Ledgewood Drive was an example of a logical boundary zone and said that carving out one of the lots and deciding that it should be rezoned to be a multiple family zone was illogical and flew in the face of City planning. The closest structures to the proposed building were the single-family homes on Artwill Avenue, and Ledgewood Drive made a logical boundary point to the small area while the others were all good-sized lots, which he thought made sense. He stated that the Board should not be asked to change that in one spot to allow a radically-different use for it instead of the SRB use created by the City Council as appropriate for that grouping of lots.

Mr. Johnson agreed with Vice-Chair Parrott and thought the Board could be flexible on the number of units but also felt that adding more tenants would be an issue. Chairman Witham agreed and felt there could be some flexibility but also felt that a 4-story building with parking was aggressive. Mr. LeMay said that a transition zone was a more appropriate description than a buffer zone and noted that the single-family homes on Artwill Avenue had 350 feet between them and the apartment houses across the way, which would shave it to being in the backyard. The Board further discussed the issue.

*Mr. Rheume made a motion to **deny** the application, and Mr. LeMay seconded the motion.*

Mr. Rheume stated that he might be more receptive if it was a transitional type of proposal with a smaller number of apartments and more reflective of what was across the street. He thought a more modest proposal would be successful and pointed out that the applicant was already talking about coming back before the Board for more variances for height, which he felt was inconsistent with what the Board wanted to keep for the SRB. He stated that the applicant didn't meet two criteria, one of which was observing the spirit of the Ordinance because a single home was expected on an SRB property and the applicant was asking for 14 units. He also felt the application was contrary to the public interest because there were other opportunities for affordable housing on other properties that would be more congruent.

Mr. LeMay said there was nothing to stop the applicant from doing something affordable on the parcel. It would change the nature of the neighborhood dramatically and negatively affect property values, and he didn't think it was in the public interest or spirit of the Ordinance. Vice-Chair Parrott read Criteria #5 about the unnecessary hardship test and whether or not the property had special conditions that distinguished it from others in the area. He pointed out that the map showed four similar lots that were contiguous to each other. He felt that the property on that basis alone had a hard time passing the hardship test. He also noted that it was a New Hampshire State law that the Board had to abide by. Mr.

Johnson stated that he would support the motion because, even though he felt it was an appropriate spot for a multi-family dwelling, 14 units were too many.

*The motion to deny the petition **passed** by a vote of 6-0.*

6) Case #10-6

Petitioners: Carl E. and Kathleen E. Walls

Property: 48 Fairview Avenue

Assessor Plan 220, Lot 58

Zoning District: Single Residence B

Description: Construct 7'10" ± x 12'± deck, 1'± x 35'± retaining wall and 6'4" ± x 15'6" ± walkway.

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 building to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow 31.4%± building coverage where 29.52%± exists and 20% is the maximum allowed.

At this point, Mr. Durbin joined the Board.

SPEAKING IN FAVOR OF THE PETITION

The owner Mr. Carl Walls explained the reason for the petition and discussed the project's materials and dimensions. He said he needed the variance because his lot was smaller than his neighbors. He went through the criteria and stated that his application met them all. He also said he had approval signatures from the neighbors.

Mr. LeMay asked Mr. Walls to elaborate about the shaving off of the property by the road. Mr. Walls replied that he didn't know if the property was sold to the City but had been told that the building was there before the roadway, at which time there was a 15' setback.

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. Johnson made a motion to **grant** the variances as presented and advertised, and Vice-Chair Parrott seconded the motion.*

Mr. Johnson stated that it was a simple request for an amount of relief that was minimal over the existing nonconformance, and he found that the tasteful deck fit in with the character of the neighborhood. Granting the variances would pose no threat to the public's health, safety

and welfare, and the spirit of the Ordinance would be observed because there were similar decks and patios in the neighborhood. Mr. Johnson said that he didn't see any benefit to the public that would be outweighed and thought the value of surrounding properties would not be diminished and would probably increase. The hardship was the relationship of the house to the road and the fact that it was 120 feet and a regular-sized lot like the abutters' 100'x100' ones, and he thought it probably was 100'x100' at one time.

Vice-Chair Parrott said he concurred with Mr. Johnson and had nothing to add.

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

7) Case #10-7

Petitioner: Lori A. Sarsfield

Property: 28 Dennett Street

Assessor Plan 140, Lot 9

Zoning District: General Residence A

Description: Increase height of rear section of second floor.

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 building to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a right side yard of 2'± where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. Lori Sarsfield was present to speak to the petition and stated that the second floor of the house was too short for most people to fully stand and she wanted to extend the rear portion of the addition about a foot. The existing home had a 2' setback in the side yard and she wanted to extend the roof. Ms. Sarsfield stated that she had spoken with all the neighbors who were excited to see the home improved. She also noted that the rear of the house could not be seen from the front or side.

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

DECISION OF THE BOARD

Mr. Durbin made a motion to grant the variances as presented and advertised, and Mr. Moretti seconded the motion.

Mr. Durbin stated that the project was a vertical expansion of an existing structure that was already not compliant with the left setback. Granting the variances would not be contrary to the public interest or contrary to the spirit of the Ordinance because the vertical expansion proposed was minor and didn't seem to impose on any other properties in the area and it

would also blend in well with the character of the neighborhood. Granting the variances would not diminish the value of surrounding properties because there would probably be no change at all. Substantial justice would be done because it would allow the owner access and more functionality to the home. Mr. Durbin said it was clear that there was a usability issue with the existing space, and the hardship was a tight lot with a significant structure on it that lacked functionality. He felt that the proposed use was a reasonable one.

Mr. Moretti said he concurred with Mr. Durbin and had nothing to add.

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

8) Case #10-8

Petitioner: Brick Act LLC

Property: 102 State Street

Assessor Plan 107, Lot 52

Zoning District: CD4

Description: Addition for expanded retail & a dwelling unit.

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

1. A Variance from Section 10.112.30 to allow no off-street parking spaces to be provided where 6 spaces are required.
2. A Variance from Section 10.111.20 to allow a use that is nonconforming as to the requirements for off-street parking to be enlarged or altered without complying with off-street parking requirements.

SPEAKING IN FAVOR OF THE PETITION

The architect Ms. Anne Whitney distributed a letter from Mr. Richard Candee that addressed what was being done with the building. She said the building was in rough shape and was the only 1-1/2-story wood structure on State Street. She wanted to put an addition on the rear that would add 380 square feet of retail and utilize the second floor and make it a two-unit building. She noted that the lot behind the structure was a good size, and with the additions proposed, there would still be almost 50% open space. She said no parking was possible on the property because it was surrounded by multiple use buildings, very few of which had parking, and that leased parking wasn't available. She thought it was a modest request to make the building more viable and bring the historic structure back. She also noted that the building was left out of the Downtown Overlay District, so the hardship was the fact that parking couldn't be provided and the client was no more nonconforming than the immediate neighbors.

Mr. Rheume asked what kind of retail would be on the first floor, Ms. Whitney said it would be similar to a small shop.

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

A neighborhood resident Ms. Carolyn Hart stated that the property was originally an antique store on the first floor and a residence, so the project would be in keeping with the structure's history.

DECISION OF THE BOARD

*Mr. Rheume made a motion to **grant** the variances as presented and advertised. Vice-Chair Parrott seconded the motion.*

Mr. Rheume noted that the Board had lots of previous requests for parking variances in the Downtown area and thought that the project met all the criteria. He felt that the addition was tasteful and would make the retail space more useful while providing a modest living unit on the second floor. He also thought that the parking requirements may be overstated because it would probably involve only one vehicle.

Mr. Rheume stated that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because there was a strong public interest in restoring the property and keeping its history alive. The tradeoff was the small addition in the back that was practically unnoticeable, and the parking was an overstated requirement. Substantial justice would be done because the property owner's ability to restore and make full use of the property was not outweighed by the public. Granting the variances would not diminish surrounding properties because the restoration of the property and tasteful addition would continue to make the Downtown area vibrant. The hardship was that it was an old, unique structure with historical significant that lent itself to having something different from surrounding properties, and to make reasonable use of it required an addition.

Vice-Chair Parrott said he concurred with Mr. Rheume and had nothing to add.

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

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- 9) Case # 10-9
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.
 2. A Variance from Section 10.1112.30 to allow three off-street parking spaces to be provided where four off-street parking spaces are required.

SPEAKING IN FAVOR OF THE PETITION

Chairman Witham asked for discussion on Fisher vs. Dover because the variance requests were similar, and he noted that the applicant had previously asked for two parking spots and now wanted three. Also, previously the building coverage was 25.3% where 25% was required, and there was no variance for lot coverage at that time.

Mr. Rheaume said he had supported the application the previous time but the Board had felt otherwise. He recalled some talk about parking on the corner, which the applicant addressed by adding a third spot, and he wasn't sure if that made a substantial difference. He felt that the heart of the issue was the lot area per dwelling unit and the in-law apartment being converted into a stand-alone one, and that had not changed substantially, so he thought that Fisher vs. Dover would apply. Chairman Witham stated that the previous stipulation granted in 1997 that it would be a single-family home carried some weight for him and other Board members. He said he was on the fence as to whether it was materially different. Vice-Chair Parrott said it was obvious that it was extremely similar. Mr. LeMay suggested taking a vote on Fisher vs. Dover.

*Mr. Rheaume made a motion to **invoke** Fisher vs. Dover, stating that there was no substantial change in the application from the previous one that came before the Board and had been denied. A request for rehearing had also been denied.
Mr. LeMay seconded the motion.*

Mr. Durbin asked what triggered the building coverage request the previous time, and Ms. Walker replied that it was a small addition for egress that addressed a .2% lot coverage. Mr. Durbin agreed that it was substantially similar.

*The motion to invoke Fisher vs. Dover **passed** with all in favor, 7-0.*

V. OTHER BUSINESS

There was no other business.

VI. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 9:45 p.m.*

Respectfully submitted,

Joann Breault
Recording Secretary