

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

**7:00 P.M.**

**NOVEMBER 24, 2015  
Reconvened from  
NOVEMBER 17, 2015**

**MEMBERS PRESENT:** Vice-Chairman Arthur Parrott, David Rheaume, Derek Durbin, Charles LeMay, Christopher Mulligan, Jeremiah Johnson

**MEMBERS EXCUSED:** Chairman David Witham, Patrick Moretti

**ALSO PRESENT:** Legal Department: Jane Ferrini

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Chairman Witham and Mr. Moretti were excused, and Vice-Chair Parrott assumed the Chairman's seat for the evening. Mr. Johnson assumed a voting seat for the meeting.

**IV. NEW BUSINESS – PUBLIC HEARINGS** (continued from November 17, 2015)

- 8) Case # 11-8  
Petitioner: Tammy Gewehr  
Property: 13 McDonough Street  
Assessor Plan 138, Lot 49  
Zoning District: Mixed Residential Business  
Description: Provide less than the required off-street parking for a Bed and Breakfast.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where three spaces are required for a Bed and Breakfast use.
  2. A Variance from Section 10.1114.32 to allow off-street parking spaces that do not comply with the vehicular circulation requirements of the Ordinance.

Mr. Rheaume recused himself from the vote.

Vice-Chair Parrott announced that the applicant had requested that the petition be postponed.

**DECISION OF THE BOARD**

*Mr. Durbin made a motion to **postpone** the petition. Mr. Johnson seconded the motion.*

*The motion to **postpone** the petition **passed** with all in favor, 5-0.*

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## 9) Case # 11-9

Petitioners: Clipper Traders LLC, owner, Play All Day LLC, applicant

Property: 105 Bartlett Street

Assessor Plan 157, Lot 1

Zoning District: Office Research

Description: Operate a dog daycare/boarding facility.

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 day care/boarding facility for dogs in a district where the use is not allowed.
2. A Variance from Section 10.1111.10 to allow a change of use without providing the necessary off-street parking.
3. A Variance from Section 10.1114 to allow off-street parking spaces that do not meet the dimensional requirements.

Mr. Mulligan recused himself from the petition.

**SPEAKING IN FAVOR OF THE PETITION**

The owner of Play All Day LLC, Amanda Field, distributed her updated plan to the Board, stating that she had found a different property in Portsmouth. She reminded the Board that she also owned three other facilities in New Hampshire. She said she would use only half of the building, the side closest to the lumber yard. Ms. Field went through the criteria, emphasizing that the operation would be a quiet one and would benefit Portsmouth because there was no other dog care facility in the area.

Mr. LeMay asked Ms. Field whether the number of dogs previously cited for boarding would change on account of the new location, or whether exterior changes were planned. Ms. Field replied that the number of dogs was undetermined but thought she could board 100 dogs eventually. The area behind the building would be fenced in to allow indoor/outdoor access for the dogs. In response to Mr. LeMay's question about how the size of the building compared to her other facilities and how many dogs were housed, Ms. Field said that her other facilities were between 5,000 and 6,500 square feet and that the number of dogs ranged from 50 to 100, which equated to around 50 auto trips twice a day.

Mr. Rheume noted that there were three additional spaces that were not on the original plan and asked whether they were employee parking, and Ms. Field agreed. Mr. Rheume asked whether the 12 parking spaces that the abutter agreed to let Ms. Field use would be available during off-hours. Ms. Field said that she and the abutter had agreed to split the parking. In answer to Mr. Rheume's further questions, Ms. Field said the abutter was in the other portion of the building and that the parking spots would be marked. As for business signage, she was working on a sign for the building and wasn't sure how she would do the road signage.

Mr. Johnson asked Ms. Field whether the revised site plan included a third variance request for parking, and Ms. Field agreed. Vice-Chair Parrott asked how many parking spots the employees would need on a typical day, and Ms. Field said it would be 2-3 spaces. He then asked how many customer spaces would be used in the middle of a typical day, and Ms. Field said there would be none because they had drop-offs in the morning and pick-ups late in the day. Mr. Johnson asked what the average ratio of employees to dogs was. Ms. Field said they usually had a ratio of 10 dogs to one employee, but with the size of the new building, she anticipated more staff. Mr. Johnson asked if the pick-up and drop-off times were typical, and Ms. Field agreed.

Doug Pinciario of New Castle stated that he was one of the two owners of the building. He introduced his partner Ed Hayes of 1182 Ocean Boulevard in Rye and President of Ricci Lumber. Mr. Pinciario explained that there were 21 spaces in front of the building, with the additional three spaces on the opposite side that could be used for employee parking. He said it took about 2-3 minutes to drop off each dog. Referring to the hardship

criteria, he said the building had been for sale for over a year before he and his partner bought it because it was in the Office Research Zone, making it difficult to find a business with permitted use.

Mr. Rheume asked how the road running between the building and Ricci Lumber curved around to the back of the lumber yard would be used. Mr. Hayes rose to speak and said they got their supplies via the back road. Mr. Rheume asked whether there were concerns about overflow parking and interference with the road for the lumber company. Mr. Hayes said that the brick structure beyond housed an industrial marine business, where the employees left in the morning and returned at night, and any overflow parking would be allowed in his lot.

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

Matt Sawyer of 152 Clinton Street stated that he was an abutter and had concerns about noise and the external space where the dogs would run around. Ms. Field replied that she ran a quiet facility with a good track record, noting that her Hampton location was surrounded by residential homes. She read a letter from Mr. Gene McNelley, who stated that his yard abutted the Hampton facility's play yard and that he had never had a problem because the company was quiet and respectful to their neighbors. Ms. Field also said her company did not tolerate excessive barking. Vice-Chair Parrott accepted the letter for the record.

No one else rose to speak, and Vice-Chair Parrott closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Rheume made a motion to **grant** the variances as presented and advertised. Mr. Johnson seconded the motion.*

Mr. Rheume reviewed the history of the application and noted that the new property was better in some ways but not in others. The distance from the new facility to the neighbors was probably further than it was from the complex in the original location; however, the inside space was larger and it seemed like the outdoor space would be about the same as the previous location. He noted that the applicant made a good case that the traffic was minimal, there was quick in-and-out, and the parking was easy.

Mr. Rheume stated that granting the variance would not be contrary to the public interest and would not change the essential characteristics of the neighborhood because the business would be in an Office Research District, where no zoning recognized the dog daycare use in that area. The District had no current structure aligned to that type of use, and the owners said it would fit in very well with the office-use buildings. He also noted that the Board could, in the future, encourage new construction to be more in line with the Office Research Zoning, which could be compatible with the uses of the applicant's company and that the proposed business was sort of a transition, so it was a compatible use. Granting the variance would observe the spirit of the Ordinance because even though the business was not a recognized use, he felt that the Zoning should be updated to reflect a dog daycare business and people's work schedules. It was an area that was wide open and distant from neighbors who might object. It would do substantial justice because he hadn't heard anything that would outweigh the property owners making good use of their property.

Granting the variance would not diminish the characteristics of the neighborhood because there was a lot of open space, and Ricci Lumber and other businesses would not be affected negatively. The improvement of the structure could potentially increase property values. As for the hardship test, the industrial buildings had been around since 1960. The use was not a recognized use, and to have it in Portsmouth, the Board would have to bend the rules somewhere. There was no real public interest that outweighed the applicant's reasonable use of the space as a dog care facility.

Mr. Johnson said he concurred with Mr. Rheume and added that any reasonable use of the building, whether it was permitted in the Office Research District or not, would need a parking variance. He felt that the business would not require more than 21 spots for a building of that size.

*The motion passed by a vote of 5-0.*

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10) Case # 11-10

Petitioners: Clipper Traders LLC, owner, Scott Thornton, applicant

Property: 105 Bartlett Street

Assessor Plan 157, Lot 1

Zoning District: Office Research

Description: Operate a brewery.

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 operation of a brewery in a district where the use is not allowed.
2. A Variance from Section 10.1111.10 to allow a change of use without providing the necessary off-street parking.
3. A Variance from Section 10.1114 to allow off-street parking spaces that do not meet the dimensional requirements.

Mr. Mulligan recused himself from this petition.

#### **SPEAKING IN FAVOR OF THE PETITION**

The owner Scott Thornton stated that they did their production out of the former Smuttynose Brewing Company and occupied some of their tank facility. He said the new location was situated for an adaptive use for their brewery and noted that, in the Office Research Zone, there were limited permitted uses, but that a brewery was not one of them. Mr. Thornton reviewed the criteria and said he would meet all of them.

Mr. Johnson asked where the deliveries would go and whether there was typically 18-wheeler traffic. Mr. Thornton replied that the deliveries would be dropped off at the garage door and that the pickups would typically be made by route trucks with 18-wheeler deliveries once a week or so. In response to further questions by Mr. Johnson, Mr. Thornton stated that production was 20 barrels a week and that a new entrance ramp would be provided. As far as a capacity and hours for the tasting room, Mr. Thornton said he would have limited tasting hours due to the limited staff and thought that perhaps six people at a time would visit the tasting room due to the limited amount of parking.

Mr. Rheume noted a discrepancy between the square footage indicated in the application and the square footage discussed. Mr. Thornton explained that they would occupy roughly 9,700 square feet of space, including 9,500 square feet for the brewery operation and 300 square feet for the tasting room and beer storage. Mr. Rheume asked about the parking plan. Mr. Thornton said that staff parking would be for 4-5 employees, and that a fair number of parking spaces for customers would be available.

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

No one rose to speak, and Vice-Chair Parrott closed the public hearing.

**DECISION OF THE BOARD**

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

Mr. LeMay stated that a use variance was one of the most difficult, but because of the history of the building having been a beverage distributor and a fish processing plant, he felt it was a natural use within that building. The property could not support a lot of public or employee parking, and most approved uses would need more than what the facility could offer, so he thought it was a good fit.

Mr. LeMay stated that granting the variance would not be contrary to the spirit of the Ordinance and would not change the essential characteristics of the neighborhood because it was an industrial use that would be consistent with the previous use of the building and would not disturb people. It would do substantial justice because he didn't see any public interest that would be protected by not granting the variance and thought it would be better to have a viable use in the building than have it empty. The surrounding properties would not be diminished because the building would continue as an industrial use without a large public impact. The property had special conditions because of its shape and the small amount of parking, and because the building was set back from the road, it wouldn't encourage street parking. Mr. LeMay felt that there was no fair and substantial relationship between the purpose of the Ordinance as it applied to the property.

Mr. Rheume concurred with Mr. LeMay, adding that the application was similar to the previous application in terms of the use issues, and he thought the Office/Research District had a future vision that the existing building didn't meet. He felt that the proposed use of the brewery was compatible with the building layout and far enough from the neighbors, so there would be no impact. His concern about the tasting room and the associated parking and traffic was alleviated due to the small number of employees and the parking agreement with the owners of the adjoining property. After verifying that the tasting area was required to be in the brewery in accordance with State law, Mr. Rheume said that the request was reasonable and recommended approval.

Mr. Durbin noted that there were other special conditions of the property because it was bordered by water on one side and by commercial use on the other, so it was uniquely situated in Portsmouth and would draw a lot of pedestrian traffic. He thought the location was perfect for a brewery.

*The motion **passed** by a vote of 5-0.*

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11) Case # 11-11

Petitioners: Huda, A. Petra & Kimberly A. Schroeder

Property: 280 South Street

Assessor Plan 111, Lot 8

Zoning District: Single Residence B

Description: Construct a 22'± x 30'± replacement garage in existing location.

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 or structure to be reconstructed and enlarged except in conformance with the Ordinance.
2. A Variance from Section 10.573.20 to allow a 0'± left side yard setback where 10' is required.

Mr. Mulligan resumed his voting seat.

**SPEAKING IN FAVOR OF THE PETITION**

The owners Petra A. Huda and Kimberly Schroeder were present to speak to the petition. Ms. Huda stated that they wanted to replace the nonconforming shed with a two-car garage using the same footprint but extending it to allow vehicles. She reviewed the criteria and said the application met them all. Ms. Schroeder added that the zero lot line was on a City-owned easement, allowing an additional 19 feet.

Mr. Rheume asked whether the illustration was correct because it looked like two structures had the same zero setback. Ms. Schroeder said that the dimensions were difficult because of the scale and said that the new structure would be within a foot of the setback. Mr. Rheume asked whether the City-owned passageway was a drivable path, and Ms. Schroeder said it was overgrown and had no access to anything.

Vice-Chair Parrott stated that the Board was reluctant to approve zero setbacks due to practical reasons, and he asked Ms. Schroeder why she couldn't move it over a few feet. Ms. Schroeder said it was long and narrow and thought it was closer to a one-foot setback, and she explained it further. Ms. Schroeder agreed to a stipulation granting a one-foot setback instead of a zero setback.

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

No one rose to speak, and Vice-Chair Parrott closed the public hearing.

**DECISION OF THE BOARD**

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

- 1) that it be a minimum of a 1-foot setback along the entire building instead of a zero setback.*

*Mr. Durbin seconded the motion.*

Mr. Rheume stated that there were unique aspects to the property, like the existing structure close to the property line. The property was long and narrow, and he thought it was fortunate that the existing structure was off to one side of the property to allow access to the space behind, but it still forced them up to the property line. The other hardship was that the City's undeveloped property indicated that there was more property in terms of light and air to an abutter than the little strip of land that could never be developed. He thought the additional foot would allow maintenance to be done around the property, so he felt that it was a good compromise.

Mr. Rheume stated that granting the variance would not be contrary to the public interest because the layout was not substantially different from other properties in the neighborhood, most of which had outside structures. It would meet the spirit of the Ordinance because a one-foot setback was the bare minimum due to the unique character of the lot, and the additional buffer of the City property make it feel less imposing than on another property. Granting the variance would do substantial justice because there was a need and desire for a two-car garage, and the narrowness of the lot drove the need for a side setback variance, so it would not be outweighed by any public interest. Granting the variance would not diminish surrounding properties because the new structure would improve and add value to the surrounding properties. As for hardship, the long, narrow lot and the unique City passageway helped lessen the encroachment impact into the side setback.

Mr. Durbin concurred with Mr. Rheume, noting that there was a 19± foot easement and the City had the right to the abutting property, so the likelihood of any development encroachment was slim to none, creating an additional buffer. The special conditions made it more palatable to have a lesser lot line setback.

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

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12) Case # 11-12

Petitioner: Ruth E. James

Property: 179 McDonough Street

Assessor Plan 144, Lot 44

Zoning District: General Residence C

Description: Add full rear dormer.

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 or structure to be reconstructed and enlarged except in conformance with the Ordinance.
2. A Variance from Section 10.521 to allow a 4'± right side yard setback where 10' is required.

### **SPEAKING IN FAVOR OF THE PETITION**

The contractor Al Saunders of 40C Constitution Drive, Londonderry representing the applicant stated that he wanted to raise the roof in the back and turn it into a full dormer. He went through the criteria, giving the reasons why the petition met them all.

Vice-Chair Parrott asked whether the bridge would remain where it was and whether all three of the new walls would still be contained within the house, and Mr. Saunders agreed. Mr. Rheume verified that there would be no windows on either side of the dormer. Vice-Chair Parrott asked how tall the vertical wall facing the back of the house would be from the existing shingles to the new shingles, and Mr. Saunders stated that it would a maximum of 3-4 feet. Vice-Chair Parrott noted that it looked a lot bigger on the drawing.

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

No one rose to speak, and Vice-Chair Parrott closed the public hearing.

### **DECISION OF THE BOARD**

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

Mr. Mulligan stated that the proposal to add a modest addition to an existing structure that had a nonconforming encroachment on the side yard setback would not increase the encroachment and would extend upward, and he added that if the applicant were to maintain a 10-ft side yard setback for the new dormer, it would have to be shifted over six feet to the side of the house and would look ridiculous.

Mr. Mulligan stated that 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 remain the same as a residential neighborhood. The health, safety and welfare of the public would not be threatened because it was common to see dormers added onto modest homes. It would result in substantial justice because the loss to the applicant if denied would outweigh any specific gain to the public in holding the line on the setbacks, especially where there was already an existing structure that violated the setbacks. The nonconformity was not being increased in

terms of the setback encroachment but was just a vertical extension. Granting the variance would not diminish the values of surrounding properties because it would be a modest increase and an improvement, which would increase the value of the property as well as enhance the surrounding properties. As for the hardship, there were special conditions that distinguished the property from others, like the small lot that backed up against the railroad tracks and the existing significant encroachment, and he thought it would be an unnecessary hardship to the applicant if he were forced to build an addition six feet off the side of the existing house. The Board also hadn't heard from anybody in the neighborhood who opposed the project, so he thought they should approve it.

Mr. LeMay said he concurred with Mr. Mulligan and had nothing to add.

Mr. Rheume said that he would support it, noting that it was a contrast to a similar request from a few months before, where the neighbor was putting a dormer alongside a neighboring property and the windows from the dormer would look directly onto the neighbor. One of the hardship aspects of the applicant's proposal was putting a dormer pointing to the back end of the property and up against the railroad tracks. The window would look out over that view, and the actual imposition to the neighboring properties on either side was minimal in terms of light and air, which made the application more powerful than the example he had given.

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

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13) Case # 11-13

Petitioner: 285-287 Hanover Street LLC

Property: 285-287 Hanover Street

Assessor Plan 125, Lot 8

Zoning District: Mixed Residential Office

Description: Four residential units on a lot.

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 435.6± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.1111.20 to allow a use that is nonconforming to be enlarged or altered without providing the required off-street parking.
3. A Variance from Section 10.1111.10 to allow a change or intensification of use in an existing structure without providing the required off-street parking spaces.
4. A Variance from Section 10.1112.30 to allow no off-street parking spaces to be provided where seven spaces are required.

#### **SPEAKING IN FAVOR OF THE PETITION**

The owner Dana Demars of 45 Sleepy Hollow Drive, Greenland stated that she bought the building in June with the intention of bringing it to a more modern condition so that young professionals could rent the units. She then discovered that the building was zoned for a 2-unit building and not a 4-unit building and that, since 1983, it had been taxed as a 4-unit building. She was asking that the building continue as a 4-unit one. Ms. Demars said the project met all the criteria.

Mr. LeMay asked whether there were two top units and two bottom units, and Ms. Demars agreed. He asked whether it would be changed, and Ms. Demars said she'd eventually like to change the roofline but not the footprint to allow more access on the third-floor loft area. Vice-Chair Parrott asked Ms. Demars how she discovered the building was only a 2-unit one. Ms. Demars said it was when she applied for a permit and wrote



down four units and was then told that it was only two units. Vice-Chair Parrott found it perplexing that the Building Inspector and Tax Assessor came to different conclusions. Mr. Durbin asked Ms. Demars whether she actually saw a building permit for two units. Ms. Demars replied that there was no conversion permit and that someone illegally converted the building into four units. The Board further discussed it.

Mr. Rheume asked Ms. Demars where the former residents had parked, and she said none of them had parking issues. Mr. Mulligan asked the square footage of the apartments, and Ms. Demars replied that the total square footage of the home was just under 3,000 square feet.

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

No one rose to speak, and Vice-Chair Parrott closed the public hearing.

### **DECISION OF THE BOARD**

Mr. Rheume stated that it was an interesting case in which a property owner was led to believe one thing by a lot of sources but discovered conflicting information from the Building Inspector and the Tax Assessor. He thought there could have been a variance granted years before without going to the Board, or that perhaps the records got lost. He said he was torn due to pros and cons about the requested relief and the parking issues.

Mr. LeMay said he had no problem considering the application for a variance but did have one with the discrepancy in the records. Mr. Rheume noted that other downtown properties had no parking and relied on other options, but he wondered whether the Board wanted to add that burden onto the application. They further discussed it. Mr. Mulligan thought it was unfortunate that there was no record of proper permits to convert the building to a 4-unit one, and the fact that it had been taxed for four units for so long carried some weight. He said the cons included a lot of relief for parking in a densely-settled area, but the benefit was that four units would be offered for work force housing. Mr. Rheume agreed, noting that future similar housing would be for people with one vehicle or perhaps none, but the current zoning hadn't caught up.

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

Mr. LeMay stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because the building was in the vicinity of the Hill, where the housing was dense, and it had existed for over 50 years. Substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. The benefit was in continuing what had been done, and he believed the harm to the public was done 50 years before. The property would have more parking in the next few years, and the units were small, so he felt that many people without vehicles would be interested in renting them. If the variance were denied, it would not improve the parking situation, so he didn't see a lot more harm to the public, and there was no evidence of diminished value of surrounding properties. As far as the literal enforcement of the Ordinance resulting in an unnecessary hardship, the alternative in complying with the Ordinance was onerous enough to the owner that it would preclude rebuilding the home. Even with two units, parking could not be provided, so some relief would need to be in place.

Mr. Mulligan said he concurred with Mr. LeMay and had nothing to add.

Mr. Rheume said he would support it because two dwelling units required four parking spaces, and the owner by right could impose on the neighborhood the need for more parking spaces. He struggled with the criteria of observing the spirit of the Ordinance, but thought it met the spirit because the applicant was requesting to add two dwelling spaces that would not require that much more parking.

Mr. Johnson said he would support it because, though the parking relief was substantial, the existing 4-unit use for many years carried some weight, and the parking had been handled during that time. Vice-Chair Parrott said he would support it because it was somewhat self-correcting in that folks would not rent a place if they really needed designated parking, and it was unlikely that more people would park there than they had in the past.

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

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14) Case # 11-14

Petitioners: Christopher L. & Anna D. Shultz

Property: 140 Orchard Street

Assessor Plan 149, Lot 38

Zoning District: General Residence A

Description: Rebuild barn in existing footprint and add separate dwelling unit.

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 or structure to be reconstructed except in conformance with the Ordinance.
2. A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where only one free-standing dwelling is allowed.
3. A Variance from Section 10.521 to allow 4,218.75. ± s.f per dwelling unit where 7,500 s.f. is required.
4. A Variance from Section 10.573.20 to allow a rear yard setback of 10'± where 14.8' is required.
5. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four are required.

Vice-Chair Parrott announced that the applicant had requested that the petition be postponed.

### **DECISION OF THE BOARD**

*Mr. Rheume made a motion to **postpone** the petition. Mr. Mulligan seconded the motion.*

*The motion to **postpone** the petition **passed** with all in favor, 6-0.*

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15) Case # 11-15

Petitioners: Ryan & Jennifer Smith

Property: 100 Peverly Hill Road

Assessor Plan 243, Lot 51

Zoning District: Single Residence B

Description: Allow two residential dwelling units and a two story deck 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 building or structure to be extended, enlarged or structurally altered except in conformance with the Ordinance.
2. A Variance from Section 10.440 to allow a two-family dwelling where only a single family dwelling is allowed.

3. A Variance from Section 10.521 to allow a 4791.6± s.f. lot area per dwelling unit where 15,000 is required.
4. A Variance from Section 10.516.40 to allow a 21'± front yard setback where 24' is required for an unenclosed deck.

### **SPEAKING IN FAVOR OF THE PETITION**

The owner Ryan Smith of 7 Laurel Court stated that he bought the house to move his parents into the bottom floor and rent the second floor. He reviewed the criteria, noting that the building was recognized as a duplex.

Vice-Chair Parrott asked Mr. Smith if he found evidence of safety codes for plumbing and electricity when the building was converted to a duplex. Mr. Smith said there was no related documentation in the Inspection Department and that an electrician had confirmed that the wiring was separate. Mr. LeMay noted that the house was in the SRB District and asked what the magic link was to the General Residence A (GRA) District. Mr. Smith said he was trying to show how the house would meet all the criteria for the GRA District. Mr. LeMay asked about the separate plot of land, and Mr. Smith said it had a separate tax card but was purchased with the property. Mr. Mulligan asked if there was any frontage on Peverly Road and whether Mr. Smith would merge the lots. Mr. Smith said there was no frontage anywhere and that merging the lots depended on whether or not there was a tax break.

Mr. Rheame asked whether the new structure would be on the driveway side, and Mr. Smith said it would be opposite the driveway. Mr. Rheame asked whether the motivation was to gain secondary egress for the upstairs dwelling unit. Mr. Smith replied that the side entrance was for both apartments, and since he wanted to close off the access to the main floor, he would need a second egress point for the first floor. He added that he wanted to replace the deck at the back of the house with a new deck that would be used by the tenants of both floors. Mr. Rheame asked whether Mr. Smith could push the deck back to get the additional five feet and be fully compliant. Mr. Smith said he could by replacing a 3-pane window with a 60-ft sliding glass door.

Mr. Durbin asked what led Mr. Smith to apply for a variance for the 2-unit use, aside from the structural improvements. Mr. Smith said he trusted the Planning Department's recommendation. Mr. Durbin thought it was a potential grandfathering issue that dated back 54 years, and he wasn't sure what zoning was in effect back then. They further discussed it.

Vice-Chair Parrott stated that it was required in the Board's rules and regulations to provide in the application an interior floor plan for a conversion or renovation to an existing structure. Mr. Smith said he didn't have any internal floor plans. Mr. Rheame asked Mr. Smith whether he was changing the internal arrangement, and Mr. Smith said he would change just a wall. Vice-Chair Parrott said that made the application incomplete because it was a substantial requirement, especially with the lack of prior inspections. He asked whether the assessor had listed the building as a duplex, and Mr. Smith agreed, noting that he had 3-4 meetings with the Planning Department but was not asked to provide internal plans.

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

No one rose to speak, and Vice-Chair Parrott closed the public hearing.

### **DECISION OF THE BOARD**

Mr. Mulligan stated that a problem he saw with the application was that, if it was not a grandfathered use, then the Board should just consider it in the spirit of the Ordinance, which required them to look at what the SRB District was and its purposes. The Ordinance was clear that it was to provide single-family dwellings, one to three dwellings per acre, and the application proposed two dwelling in less than a foot of an acre. Therefore, he

had a hard time with the spirit. He thought Mr. Durbin made a good point about the preexisting nonconformance for the past 60 years and asked whether the application should be continued.

Vic-Chair Parrott said that the Board could table the application so that it could be investigated by the Planning Department and that he wasn't sure about the grandfathering aspect. Mr. Mulligan remarked that if it had been in use within the last eight months, it was still grandfathered. Mr. LeMay said it wasn't difficult to see a continuation of the grandfathering, but he thought a key issue was when it became an SRB zone.

Mr. Rheume said that he was hesitant to send it back to the Planning Department without specific questions, like what the record was and whether the district became an SRB one before or after evidence of the house being used as a duplex. It appeared that the home was a family duplex because it had separate power feeds. The other part that he said bothered him was that the Board was adamant about preserving the SRB zoning district, especially with the increasing pressure to make full utilization of all those properties. He said that the SRA and SRB denoted single residences and he asked whether the right course of action was to rationalize it as grandfathering or consider that it had been over 50 years and recognize what was already in place.

Vice-Chair Parrott said that the structure didn't meet the requirements for an SRB Zone and was dimensionally inadequate. The building looked like a single-family home and was surrounded by them. He thought that, just because the house was used in a certain way for a long time, it was not an argument to continue that use. He was interested in the history of the use versus the zoning, and he felt that it was a legitimate question for the Planning Department that would give the Board guidance for that case as well as future ones. He also thought it was significant that the drawings had not been provided, thus making the application incomplete.

Mr. Smith agreed to postpone the petition. Mr. Durbin recommended that Mr. Smith research whether the 2-family use previously existed. He also suggested looking into when the property fell into the SRB District or when the SRB District was created. Mr. LeMay suggested checking the tax record to see whether the structure had been taxed as a duplex since 1950.

*Mr. Rheume made a motion to **postpone** the petition until the applicant could provide additional information as discussed, pending a referral to the Planning Department as per the information discussed. Mr. Durbin seconded the motion.*

*The motion to **postpone** the petition **passed** with all in favor, 6-0.*

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## VI. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 10:00 p.m.*

Respectfully submitted,

Joann Breault  
Recording Secretary