

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

7:00 P.M.

**NOVEMBER 22, 2016
Reconvened From
NOVEMBER 15, 2016**

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Patrick Moretti, Christopher Mulligan, Arthur Parrott, Alternate Peter McDonell

MEMBERS EXCUSED: Alternate John Formella

ALSO PRESENT: Jane Ferrini, Planning Department

Chairman Rheaume convened the meeting at 7:00 p.m.

Mr. Johnson moved to suspend the rules to allow for alternate Board of Adjustment members to participate in the public hearing, seconded by Mr. Parrott. The motion passed by a unanimous voice vote (7-0-0).

Mr. Mulligan moved to allow up to fifteen minutes for presentations and five minutes for public speakers, seconded by Mr. Moretti. The motion passed by a unanimous voice vote (7-0-0).

III. PUBLIC HEARINGS (cont'd)

- 2) Case #11-2
Petitioner: 909 Islington Street LLC
Property: 909 Islington Street
Assessor Plan 172, Lot 7
Zoning District: Business
Description: Two free-standing signs on a lot.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.1243 to allow two freestanding signs on a lot where only one freestanding sign is allowed.
 2. Variances from Section 10.1253 to allow a freestanding sign to be set back 10'± from the front lot line and 1.5'± from the left side lot line where 20' is required for each.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech, representing the applicant, explained that the unique property has 30' of frontage on Islington Street, which is the only frontage on a public street. There are approximately twelve businesses, which are not visible from Islington Street. The existing signage would be changed from three free standing signs to two. The front yard setback would increase and the side yard setbacks would remain the same. There is no possible way to meet the 20' setback requirement given the parking lot. What is proposed presents a plan that is more attractive and more conforming than what exists today. He explained how the application meets the five criteria necessary to grant a variance.

Attorney Pelech confirmed to Mr. Johnson that the existing Dow automotive sign would remain and the rest would be combined. Mr. Pelech noted that the proposed number of slots on the sign is fourteen.

Mr. Lee asked how will it be illuminated. Mr. Pelech replied that the lighting will be external ad spotlights will possibly be provided that will face downward.

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

No one rose to speak, and Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the application as presented and advertised, and Mr. Johnson seconded.*

Mr. Mulligan stated that granting the variance would not be contrary to the public interest nor contrary to the spirit of the Ordinance. The generally commercial character of the neighborhood would not be compromised in any way by changing the sign. Health, safety, and welfare will be improved by eliminating the visual clutter. The existing signage will be put into slightly more conformance. Granting the variance would result in substantial justice. The hardship to the applicant to deny the application outweighs the benefit to the public. The property already consists of non-conforming signage and this would improve that issue. Granting the variance would not diminish the surrounding property values. He agreed that the lot is unique and creates a special condition that distinguishes it from other properties in the area. The purpose of the sign Ordinance is to alleviate visual clutter and the proposal would do as such. There is no way for the applicant to comply with the setback requirements and also provide adequate signage. There is no fair and substantial relationship between the purpose of the Ordinance and its application to this property. The current commercial use in a commercial zone is a reasonable use for the property.

Mr. Johnson concurred.

The motion passed by a unanimous roll call vote (7-0-0).

3) Case #11-3

Petitioners: Michael A. & Deborah A. Proulx

Property: 8 Meadow Road

Assessor Plan 236, Lot 58

Zoning District: Single Residence B

Description: Construct rear dormer.

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 22'8" ± secondary front yard setback where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Michael Proulx explained he now has two front yards as a result of recent zoning changes. He highlighted the proposed changes to the Plan to construct new dormers. The variance is not contrary to public interest and it would not create a visual obstruction. He explained how the application meets the five criteria necessary to grant a variance. He noted that he has lived in the home for several years and has put a great amount of work into improving the property.

Chairman Rheume asked if the house had originally a shallow pitched roof in reference to an application submitted in 1997. Mr. Proulx replied that it was originally a ranch and the dormers were built in the front to create an appealing appearance. It was framed for a bathroom and it would be costly to change that.

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

No one rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Vice Chairman LeMay moved to **grant** the variances for the application as presented and advertised, and Mr. Moretti seconded.*

Vice Chairman LeMay stated that the variance would not be contrary to the public interest and would observe the spirit of the Ordinance. It is consistent with the neighborhood and it proposes a very small change to the building. Substantial justice is done and there is no harm or impact to the neighborhood or other individuals with approval of the variance request. Although, the back of the property is close to the property line, it is not posing any particular impact. The values of

the surrounding properties would not be diminished. It is clear that the house is not changing in any substantial way and does not affect the neighborhood. The sighting from the street is adequate hardship criteria to address the need for this type of variance.

Mr. Moretti concurred and added that the additional hardship is to center it on the roof of the house, which is driven by the existing conditions and design of the house.

The motion passed by a unanimous roll call vote (7-0-0).

4) Case #11-4

Petitioner: AJL Real Estate, LLC

Property: 65 Fields Road

Assessor Plan 170, Lot 4

Zoning District: Single Residence B

Description: Replace an existing 8'± x 8'± shed with an 8'± x 12'± shed.

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

1. A Variance from Section 10.573.20 to allow a 3'± right side yard setback where 10' is required.
2. A Variance from Section 10.521 to allow 23.1%± building coverage where 20% is the maximum allowed.

Chairman Rheume noted that the Planning Department determined an additional variance would be necessary to allow for a 3'± rear yard setback.

SPEAKING IN FAVOR OF THE PETITION

Mr. Phil Labrie, owner and occupant of the property, explained that the existing shed will be replaced with a slightly larger shed. The purpose of the variance request is because it is a small lot and to meet the setback requirement, the shed would be in the middle of the yard. He felt that it would be better to locate the shed in the corner of the property.

Mr. Johnson asked whether the Planning Department and the applicant considered the 5' setback requirement for sheds less than 100 s.f. and 10' in height. Mr. Labrie noted that was not discussed.

Mr. Johnson asked why the location was chosen. Mr. Labrie stated that logically it made the most sense given the size of the lot and they felt it would be best to tuck it in the corner.

With regard to the requested relief, Chairman Rheume explained that in this zone a 10' side yard was required for an accessory building. *[Chairman Rheume and the Board approved a clarification to this statement prior to the adoption of the Minutes at the Board meeting on January 17, 2017 adding that the zoning district required a 10' side setback and the exception under Section 10.573 did not apply.]*

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

No one rose to speak, and Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. Johnson moved to **grant** the petition as presented and advertised with the addition of a 3' rear yard setback as an additional granted request, and Mr. Moretti seconded.*

Mr. Johnson stated that replacing a shed with a higher quality and slightly larger shed is a reasonable request. The proposed use does not conflict with any explicit or implicit purpose of the Ordinance. There is no potential for health hazard, injury, public rights of the abutters, or any other related conflict. It maintains the spirit of the Ordinance and many other properties have sheds of the same nature. Often they are in closer proximity to the lot line than zoning would request. It is a modest size shed and that allows to be closer to the property line while still allowing for some buffer between the neighbor. Substantial justice is done and there are no benefits to the public that would outweigh the harm to the homeowner if they were not allowed to put the shed in this location. It is reasonable to maximize the backyard usage while still having a small shed. It can be argued that the shed may improve the surrounding property values. The unusual lot shape with an acute angle does make it difficult to meet the 5' or 10' and the proposed location is the only opportunity for a shed on the property.

Mr. Moretti stated that the applicant has made a reasonable attempt to locate the shed away from the lot line, improve the existing situation, allow for maintenance area, replace the shed almost in-kind and adapt to storing the yard equipment.

*The motion **passed** by a unanimous roll call vote (7-0-0).*

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- 5) Case #11-5
Petitioners: Litchfield Portsmouth LLC, owner, Patrick Dorow Productions, Inc.,
applicant
Property: 170 West Road
Assessor Plan 252, Lot 2-14
Zoning District: Industrial
Description: Theatre arts studio with related storage space.
Requests: The Variances and/or Special Exceptions necessary to grant the
required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use 4.42 to allow a studio
for lessons, set production and non-performance rehearsals where the
use is only allowed by special exception.

SPEAKING IN FAVOR OF THE PETITION

Mr. Peter Weeks provided a brief background of Patrick Dorow Productions. The proposed use would not include hosting performances and would mainly be used to provide lessons and storage for the equipment and costumes. The business is currently offering the lessons at the Kittery Community Center and utilizing storage at three different storage units. He explained how the application meets the five criteria necessary to grant a variance. He noted that most of the students would be dropped off during afterschool hours and weekends. There would be no substantial increase in demand on municipal services or increase in stormwater runoff. The performances will continue to be presented at the Kittery Community Center.

Mr. Johnson asked what the maximum amount of people on a busy day could be. Mr. Weeks replied that the class size is about 7-12 people.

Mr. Johnson asked whether there will be a building permit requested. Mr. Weeks noted that a meeting is scheduled with the building inspector to make that determination since the previous tenant occupied the space for sixteen years. Mr. Johnson noted that it may be beneficial given that there will be a greater load on the facility compared to the past warehouse use.

Mr. Moretti asked what type of signage is planned. Mr. Weeks replied that the only signage would be on the door and that is only what the landlord allows. There will be no exterior signs on the property.

Chairman Rheume asked what activity is involved for the set construction. Mr. Weeks explained that there are four, year-round full-time employees occupying the space during normal business hours. There will be loading and delivery of equipment six times per year for the main stage performances at the Kittery Community Center.

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

No one rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the petition as presented and advertised, and Mr. Mulligan seconded.*

Mr. Parrott stated that the multi-use building is well established in community and setback far from any residential units. He noted that it was explained how the particular special exception applies to the Article. The description of the activities would not be any activities that could result in potential fire, explosion, or release of toxic materials. There are no nearby residential areas. The adjacent units are for commercial or industrial use and the proposed activity would fit in with the other activities that occur in the building, so there is no detriment to property values in the surrounding area. Based on the number of personnel occupying the space and use of the building, there would not be an issue with traffic congestion. Considering the proposed activities there would likely not be any hazard that would require an increased demand for water and sewer disposal, police, or fire. In fact, it would serve the schools. There is no significant increase in

stormwater runoff since there is no external change to the building. He stated that the request meets all the six criteria.

Mr. Mulligan concurred.

The motion passed by a unanimous roll call vote (7-0-0).

6) Case #11-6

Petitioner: LCSG, LLC

Property: 160-170 Union Street

Assessor Plan 135, Lots 29 and 30

Zoning District: General Residence C

Description: Construct a 10-unit multi-family dwelling.

Requests: The Variances and/or Special Exceptions 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 10 dwelling units where 8 dwelling units is the maximum allowed.
2. A Variance from Section 10.521 to allow 945± s.f. lot area per dwelling unit where 3,500 s.f. is required.
3. A Variance from Section 10.1112.30 to allow 15 off-street parking spaces to be provided where 16 are required for 10 residential units.
4. A Variance from Section 10.1114.21 to allow off-street parking spaces with dimensions of 8.1'± x 18'± where the required dimensions are 8.5' x 19'.
5. A Variance from Section 10.1114.21 to allow a 22'± wide maneuvering aisle where 24' is required.

Chairman Rheume stated that Mr. Johnson and Mr. Mulligan would recuse from voting on the petition. Mr. McDonell would be voting resulting in six voting members. He noted a grant of approval requires at least four positive votes.

SPEAKING IN FAVOR OF THE PETITION

Matthew Goyette, owner/applicant, explained his background and history with the property. He purchased the property several years ago when it was in severe disrepair and has invested a lot of money into upkeep of the building. He felt that the proposed improvements will be a positive change for the neighborhood.

John Bosen, representing the applicant, provided a brief overview of the project. The existing barn on the property is a fire and safety hazard and based on the level of disrepair, it is best to demolish the existing structures. The lot size is 0.9 acres and the building envelope is extremely narrow. The proposed plan would meet lot and open space requirements. There are four units allowable by right and five would be permitted by granting a variance for special exception. The proposed parking dimensions are smaller than what is required.

Mr. Bosen explained that most of the neighborhood lacks parking and is non-conforming and felt that the smaller parking space dimensions is a reasonable compromise. The proposed changes will improve health and safety of the public by replacing an unsightly and unsanitary home with a modern building that meets the setback requirements. Substantial justice would be done by granting the variance. The hardship is on the owner/applicant and the benefits do not outweigh the public. He stated that 160 Union Street needs to be demolished and the two properties cannot be maintained as two lots. The applicant needs relief from the required lot area per dwelling. It will reduce the impact on the surrounding properties and the proposed development will be more consistent with the neighborhood. He stated that the petition meets the five criteria necessary to grant a variance.

Vice Chairman LeMay asked where snow storage is located. Mr. Eric Weinrieb, Altus Engineering, replied that there is 5' from the rear setback where snow could be stored and excess snow would have to be removed from the site.

Mr. Moretti asked how the light from traffic entering and exiting the driveway will be mitigated. Mr. Bosen replied that buffering and trees could be considered through the Planning Board process.

Mr. Moretti asked to describe the plan for managing ground surface water runoff. Mr. Weinrieb replied that it would be addressed through the site plan review process. Subsurface storage on the site with a discharge onto the street will likely be considered.

Chairman Rheume asked to confirm that the primary front yard setback is 2' based on the averaging calculation. Mr. Weinrieb replied that the two abutting properties have 0' and 1.5' of setback, which calculates to an average of one foot.

Chairman Rheume asked whether a structural engineer had been engaged to determine whether the structure warrants demolition. Mr. Bosen replied that a structural engineer had not yet been consulted with.

Chairman Rheume asked if the property at 168-170 Union Street had any issues that would make it inhabitable. Mr. Bosen noted that it is non-conforming and does not provide for much parking. There are currently six cars on the street as a result of the occupancy in that building and the proposed plan would remove five of the on-street parking spaces.

Chairman Rheume asked whether it is possible to conduct an analysis to determine that backing in and out of the parking spaces was feasible with smaller dimensions. Mr. Weinrieb replied that an 18-20' parking stall is common and does function well. The transient spaces, such as in retail plazas, typically need the 22' width. He added that they would be willing to provide a turning template.

Chairman Rheume asked why one spot was marked as handicap access. Mr. Weinrieb explained that it has still not been confirmed whether that handicap accessible space is necessary to meet ADA requirements. That space would remain regardless if it is designated as handicap accessible.

Mr. Bosen confirmed to Chairman Rheume that the requirement for 10 units would be a variance request.

Chairman Rheume stated that seventeen letters were received from residents on Union Street or Austin Street in opposition of the application, which were received prior to the meeting. An additional five letters were received in favor of the application, which were provided by the applicant's representative previously or in the meeting.

SPEAKING IN OPPOSITION TO THE PETITION

Several individuals stated common concerns for the non-conformance of the proposed plan. It was stated that the number of units and lot area per dwelling were unreasonable. Parking and traffic congestion was a major concern given the existing congestion that occurs in the area. The potential negative impact for noise and sunlight was mentioned. It was stated that the proposed development would have a negative impact on the character of the neighborhood and surrounding property values. It was questioned where the snow and dumpster storage would be feasibly located. There were concerns raised for the owner's ability to maintain the property and some felt that the structure does not warrant demolition. Ms. Patricia Buchanan, 293 Austin Street, presented a petition that included 97 signatures in opposition of the construction. Said concerns were stated by the following individuals:

- Mr. Scott Rafferty, 200 Union Street;
- Mr. Adam Schlader, 110 Union Street;
- Mr. Roland Cody, 188 Union Street;
- Ms. Janet Morly, 188 Union Street;
- Ms. Suzy Halfern, 88 Union Street;
- Ms. Patricia Buchanan, 293 Austin Street;
- Mr. Reid Johnson, 292 Austin Street;
- Ms. Elyse Hambacher, 220 Union Street;
- Mr. Rick Condon, 141 Madison Street;
- Mr. Jeffrey Zurhellen, 287 Austin Street;
- Ms. Thelma Brazie, 180 Union Street (Mr. Cody spoke on her behalf);
- Mr. Todd Creamer, 199 Union Street;
- Mr. Stephen Lozan, 273 Austin Street;
- Mr. Stephen Erickson, 257 Austin Street (Ms. Hambacher spoke on his behalf);
- Ms. Paula Chalfin, 496 Middle Street #1;
- Mr. Brendan White, 119 Union Street;
- Mr. Rick Becksted, 1395 Islington Street;
- And, Mr. Whit Kohlhase, 187 Union Street.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Joel Johnson, 165 & 171 Union Street, stated his support for the petition. He felt that the proposed development could help provide affordable housing, which is a current need for the

City. There is a net benefit for the parking and he felt that the owner has a history of attracting favorable tenants.

Ms. Morly added to her previous statement that the proposed rental costs are not affordable and there was a lack of opportunity for the public to provide their input.

Ms. Halfern added to her previous statement that the proposed rental amount would not be classified as workforce housing.

Mr. Bosen clarified that it would not be workforce housing. He noted that the proposed plan improves the non-conformance of the property. He explained how the proposed project addresses the three primary concerns of the public: character of the neighborhood, traffic, and maintenance.

Mr. Lozan added to his previous statement how the petition does not meet the hardship criteria.

Mr. Cody and Mr. Zerhellen added to their previous statements that the demolition of the structure may not be necessary.

Mr. Condon noted that the Board has the right to deny the petition to enforce the current zoning Ordinance.

DECISION OF THE BOARD

Mr. McDonell stated that the neighborhood is predominantly single or two family homes, but there are a few structures of this nature. The existing structure in the form of renovation may not be unreasonable, but ten units is close to excessive. The proposed lot area per dwelling would be close to the lowest in the neighborhood and it may be a small lot for a ten-unit building.

Vice Chairman LeMay concurred with Mr. McDonell and added that it appears the lot would not leave adequate room for anything other than parking, such as snow and trash.

Mr. Moretti emphasized his concern that there would be a lot of pavement without a lot of room for drainage. The drainage analysis has not been provided. Multiple cars pulling in and out of the single driveway is a concern. The lights and the closely abutted house may experience problems. The structure on 160 Union Street does need improvement, but a wholesale change is a far reach for the property.

Mr. Parrott felt that the proposed increase in density is not conducive to a quality of life. The lot would be developed to mostly all pavement, which would not entirely benefit the tenants. It is contrary to the way the City would like to develop. He added that the character of the neighborhood is a major consideration. The large majority of the properties on this section of Union Street are single family homes or duplexes. This would be a more intensely developed proposal than what exists. The character of the neighborhood is contrary to the proposal. The neighborhood has remained in this configuration for quite some time and this would be a step in the wrong direction.

Mr. Lee stated that the ten-unit development is too aggressive.

Chairman Rheume explained that the Board has little control over what could be demolished and it would be unfortunate to see the perfectly fine structure torn down. He stated that the neighborhood has unique details with thin houses on thin lots and the essential character of the neighborhood should be preserved. He explained how the 211 Union Street development was thoughtful and that helped convince the Board it was worth granting a variance for. He considered the tenants to not be a major concern, however, the parking and character of the neighborhood is. There is substantial relief being requested and he stated his support for a motion to deny the request. He felt that the hardship does not exist since the lot is a basic rectangular lot and not particularly unique compared to other lots in the neighborhood. The current structures is more conforming to the general characteristic of the neighborhood compared to what is proposed.

Vice Chairman LeMay stated that there could be a plan that better respects the neighborhood. The plan could be of medium density with some green space that does not encroach on the neighbor.

*Vice Chairman LeMay moved to **deny** the petition as presented and advertised, and seconded by Mr. Parrott.*

Vice Chairman LeMay stated that there would definitely be a change in character to the neighborhood. It is in a cluster with predominantly one or two family homes and the proposal should be similar to that density. He acknowledged that it would still require variances, but what is requested is too intense. The benefit to the applicant outweighs the loss to the public based on the significant comments made by the neighbors in regards to light, air, and encroachment. The issues with snow and trash are of concern with the small amount of room available. There is nothing in the property that speaks to hardship and there are plenty of alternative options available, thus, hardship does not relate to the requested variance. It could be argued that the detriment to surrounding property values is not as severe as it appears, however, there may exist a legitimate concern. He was not entirely sure how severe that impact would be.

Mr. Parrott concurred and added that there was no expert opinion offered for the need to demolish the older house or impossibility of rehabilitation. There should be more concrete affirmation on that before agreeing that it needs to be torn down. He cited the baseline requirement for the hardship test, which states that “because of special conditions of the property that is distinguished from other properties in the area” to emphasize that a special condition has to exist. Many of the surrounding properties are of similar size and shape to 160-170 Union Street and he could not find a special condition that satisfies the law. For those reasons, he stated his support for the motion.

Chairman Rheume added that the essential characteristic of the neighborhood and the hardship are the main two concerns.

*The motion **passed** by a unanimous roll call vote (6-0-0).*

Mr. Mulligan moved to suspend the rule and extend the meeting past 10:00pm, and seconded by Vice Chairman LeMay. The motion passed by a unanimous voice vote (7-0-0).

7) Case #11-7

Petitioners: Melissa A. Raffoni Revocable Trust of 2011, Melissa Raffoni, Trustee

Property: 606 State Street

Assessor Plan 127, Lot 21

Zoning District: General Residence C

Description: Expand height of third floor with front and rear dormers.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure 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 setback of 4'± and a left side yard setback of 5'± where 10' is required for each.
 3. A Variance from Section 10.521 to allow a rear yard setback of 3.5'± where 20' is required.

SPEAKING IN FAVOR OF THE PETITION

Ms. Raffoni explained that she purchased the property with the intent to eventually live in the top unit during her retirement. The third floor is considered substandard and the ceiling heights range from 6.6' to 7'. The proposed plan would raise the roof and allow for the building to meet safety code requirements. The current use would not change and it would remain consistent with the character of the neighborhood.

Mr. Mulligan asked whether the proposed dormer would face State Street or the abutting brick building. Mr. Brandon Holben, Winter Holben Design LLC, replied that the dormer would be installed on each side of the building, so one facing State Street and the other facing the rear lot.

Mr. Parrott asked whether the rear stairs would be replaced. Mr. Holben replied the stairs would be replaced and a slight addition would be made to be a compliant egress.

Mr. Parrott stated that it is hard to tell whether further encroachment on the rear setback will be required compared to what exists today. Mr. Holben explained that the proximity to the rear setback would remain, and instead the sideyard setback would be further encroached.

Chairman Rheame asked to describe the parking situation. Mr. Holben stated that currently the parking is tandem and can fit up to six cars.

Mr. Holben confirmed to Chairman Rheame that the setbacks are based on tax map information, not a survey.

Mr. Holben explained to Chairman Rheume that the rear setback of 3'6" is that to the edge of the house. The existing stairs are under 3'. Chairman Rheume stated that the concern would be that the stairs are higher than 18" and would have to be part of the setback.

Chairman Rheume referenced the stairs shown in the floor plan and mentioned that those stairs were not shown in the elevations. Mr. Holben explained that after discussion with the Fire Department, it was determined that the second egress would have to remain. Ms. Raffoni noted there is currently an open permit for replacing the existing stairs. Chairman Rheume emphasized that it is important to have the external stairs in the rear of the property to have the necessary egress and it appears that those stairs encroach more than the 3'6", which could be an issue.

Mr. Holben explained to Chairman Rheume that a guardrail deck and roof hatch would be added. The roof would be accessible from a roof hatch at the top of a stairwell.

Chairman Rheume asked what the overall style of the architecture is. Mr. Holben described how the neighborhood was a mix of different styles.

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

No one rose to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the petition as presented and advertised, and seconded by Mr. Lee.*

Mr. Mulligan stated that the design is interesting and may be unorthodox for the neighborhood. There is nothing being proposed from a design perspective that would alter the essential character of the neighborhood or affect the health, safety and welfare of the public. Granting the variance would not be contrary to the public interest nor to the spirit of the Ordinance. This is a residential application to a residential property. Granting the variance results in substantial justice, the loss to the applicant is not outweighed by any corresponding gain to the public by making the applicant comply to the setback requirements. This is a vertical expansion on an existing non-conforming footprint, which is common and usually does not pose an issue. The sighting of the dwelling is far away from the nearest residential structures so even vertical expansion would not have an appreciable impact on the neighboring properties. Thus, there would not be a diminishment of surrounding property values. The next nearest abutter is in a deep backyard on Austin Street and would not experience negative effects. The special condition of the property is that it is an oddly shaped lot and already has setback violations. It is simply a vertical expansion of the existing setback violations. The sighting of the dwelling to the rear of the lot in an area where there are not affected nearby dwellings is unique. There is no fair and substantial relationship between the purposes of the setback requirements, the promotion of light, air, space, and emergency access. The use is reasonable.

Mr. Lee concurred.

Chairman Rheume thought that there may be an issue with the rear stairs and asked the Board whether that should be addressed immediately or by the Zoning Board in a later meeting. Mr. Mulligan felt comfortable granting setback relief to the extent that is necessary to reconstruct the rear stairs where the applicant believes it is, which is probably about 6". He thought it is acceptable and would argue for the same variance for the same reason. Chairman Rheume suggested that a stipulation be added as follows:

The granted rear setback relief is amended to allow, if necessary for reconstruction, the rear stairs to extend into the rear yard setback to a maximum 6" from the rear property line with that allowable extension applicable only to the stairs.

Mr. Mulligan and Mr. Lee concurred with including the stipulation in the motion.

Chairman Rheume stated in opposition of the motion because he considered it as a 1.5 story house. What is being proposed does not appear to keep in essential character of the neighborhood. The appearance is odd. It is setback from road and is fairly visible and there are different ways to create additional space to the property. It is outside the historic district, however, the neighborhood does consist of historic looking homes. The proposed plan would be contrary to that character. He added that the request would grant a fair amount of relief. It would be tight to the rear lot line and access to the rear area would be a concern.

Mr. Parrott stated he could not identify where the rear lot line would be relative to the new structure. He was not satisfied that the actual relief being requested was identified and he stated in opposition of the motion.

*The motion **passed** by a roll call vote (4-3-0), with Mr. Moretti, Mr. Parrott, and Chairman Rheume opposed.*

ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:24pm.

Respectfully submitted,

Marissa L. Day, Acting Secretary of the Board of Adjustment