

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
SCHOOL BOARD CONFERENCE ROOM
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

MARCH 15, 2016

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman David Rheaume, Arthur Parrott, Charles LeMay, , Jeremiah Johnson, Patrick Moretti, James Lee, Peter McDonell

MEMBERS EXCUSED: Christopher Mulligan

ALSO PRESENT: Planning Department: Jane Ferrini

I. APPROVAL OF MINUTES

A) February 16, 2016

*The February 16, 2016 minutes were **approved** with minor corrections by unanimous vote.*

II. OLD BUSINESS

A) 209 Clinton Street – Clarification of February Vote

Mr. Moretti recused himself from the petition.

DECISION OF THE BOARD

Chairman Witham stated that the petition required several variances and was previously approved. He said that there was a discrepancy in the measurement from the site plan differing from what was submitted to what actually existed. Even though what was built was built according to the plan, the measuring point changed slightly, so the Board had treated it as an equitable waiver the month before. He said that the Planning Department had asked the Board to vote on a clarification that it was ‘as built’.

*Vice-Chair Rheaume made a motion that the Board **clarify** that the information that was provided by the applicant during the original application and subsequently reviewed by the Board at their previous meeting was what the Board understood the project to be, as presented and advertised by the applicant, and that the discrepancy as identified by the Planning Department was within what the Board had intended to approve.*

Mr. Parrott seconded the motion.

Minutes Approved 4-19-16

Chairman Witham stated that the vote was to clarify the previously-granted variances.

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

B) 140 Thornton St – Request for Rehearing

Chairman Witham stated that there were several arguments made by, and a rebuttal received from, the applicant. In regards to procedural issues and more specifically, following Robert’s Rules of Order, he stated that he had been on the Board for 15 years and no one had ever mentioned Robert’s Rules. He said the City Attorney said the City was not bound by Robert’s Rules and neither was the Zoning Board. Chairman Witham said he researched the State Statutes regarding zoning boards and found that the Zoning Board could adopt its own rules for procedures, which they had. He said he thought the Board clearly followed those rules and procedures and found no procedural errors and no merit for the rehearing.

Vice-Chair Rheume stated that, even if the Board had adopted Robert’s Rules, there was a procedure about small zoning boards in it that talked about informal discussion and how the Chairman could speak in informalities and vote on all questions. Mr. LeMay stated that he read through it and said it argued point-by-point the Board’s discussion that evening. He said the Board heard no testimony regarding hardship, and he believed they properly considered the issues and nothing new was found.

Vice-Chair Rheume stated that he re-watched some of the discussion and also reviewed some testimony from the public and the applicant regarding the characteristics of the neighborhood. He said he recalled discussing how the Board took a close look at the proposed development and concluded that it didn’t meet the characteristics of the neighborhood strongly enough. He said the Board considered the spirit of the Ordinance and took everything into consideration for hardship, including the unique character of the property. He agreed that there was nothing substantially new to rehear.

Chairman Witham stated that part of the request for rehearing and the five errors that the Board was said to have made was that the Board did not allow the opponents to give testimony. He stated that he said he wanted to focus on lot coverage and the setback issue regarding the characteristics of the neighborhood and that he was talking about an esthetic issue. He needed the applicant to discuss the design so that the Board could better understand where the steps needed to be as well as the lot coverage issue. In order to grant a rehearing, he stated that it had to be a proven procedural error or new information submitted, and he didn’t find either of those. He felt it was a well presented case and a solid deliberation by the Board.

Mr. Parrott stated that the hearing was very thorough and that everyone had ample opportunity to express themselves. Regarding the procedural aspects of it, he said that anyone who watched the Board knew that each member was an individual, with no group ‘think’, and that there was no order of precedence in speaking. It didn’t matter who spoke first, second, or last, and it varied from question to question. Regarding Robert’s Rules, he said the Board’s members were independent agents. Mr. Parrott also noted that page 2 stated that the Board “was required to look at the proposal for new construction variances based on the dimensions of the vacant lot, not by comparing the relief sought for an existing structure schedule for a demolition”. He said if it was written somewhere that the Board was required to do so, he didn’t know where it was. He said the Board was not constrained in how they looked at things and what aspects they discussed. They could compare the dimensions in any way they wanted to as well as decide if what a speaker said was relevant or irrelevant. He said it was a basic misunderstanding of what the Board was allowed and required to do and how they proceeded night by night.

DECISION OF THE BOARD

*Mr. LeMay made a motion to **deny** the request for rehearing. Mr. Lee seconded the motion.*

Mr. LeMay stated that the Board was considerate of neighbors' property rights as well as the property rights of owners. He said he would incorporate his previous comments.

Mr. Lee concurred with Mr. LeMay, adding that the Board followed procedures established by the Board's longevity.

*The motion to deny the request for rehearing **passed** with all in favor, 7-0.*

C) 482 Broad St – Request for Rehearing

Mr. Moretti recused himself from the petition.

Vice-Chair Rheume stated that the end of the proposal talked about his making the motion to grant the special exception and discussion of the decrease of property values and using the word 'negligible'. Vice-Chair Rheume stated that he said 'negligible increase', not 'negligible decrease' and that he did not feel that the property values were decreased by what was taking place. He said the information from the applicant on the original application providing additional information that talked about negligence changed nothing. It was not a significant enough error to say that the Board in its deliberations failed to carry out what they needed to do by his use of the word 'negligible'.

Chairman Witham stated that the application was denied two previous times, and each time it came back, the applicant seemed to incorporate more of the Board's concerns. He said he felt it met his concerns and the variance criteria, that it was a thorough discussion, and that the petition had been on the Board's radar screen for years. They knew all the players, concerns and issues. He said he did not see any procedural errors on the Board's part, nor new information presented that would sway him to grant a rehearing.

Vice-Chair Rheume stated that quotes were taken from some Board members that seemed to be in opposition to the final outcome. He said it was a close vote and the Board had a lot of deliberation, and it was split in terms of where people were seeing the case ending up. He said it was part of the Board's natural dialogue to come to a decision and inform each other of what they were thinking, and just because someone brought up a point in opposition to the vote did not mean the Board made an error. He said here was also discussion that the Board took on a legislative aspect and didn't follow the criteria for the special exception, but he believed that the Board looked carefully at those criteria and everything they did talked to it. There was some discussion back and forth as far as scale versus size and the size of the project, but scale was reflective of the size of the property the structure was on. He thought the Board gave it a good discussion and the majority of the Board members were swayed to grant it.

Mr. LeMay stated that he went through the discussion and thought it was accurate regarding his ruminations on the subject. His statement noting that a few other homes were facing sideways was accurate as well, even though it wasn't relevant. It came down to the size of the property. He said he also commented that what the Board did was consistent with the intention of the Zoning. It was a special exception that met the requirements. Mr. LeMay said that nothing of what he said should have been construed as being absolute on the part of the Board.

Mr. Parrott said he agreed that the hearing was thorough and that he did not find any new information in the presentation before them, nor did he find significant technical errors. He said he did not believe a rehearing should be granted.

DECISION OF THE BOARD

Mr. Johnson made a motion to deny the request for rehearing. Mr. LeMay seconded the motion.

Mr. Johnson stated that he supported the application the third time it came before the Board, but not the first two times, and he felt that the Board had a very just and open discussion. He said that both sides were heard, that the Board was on both sides of the fence and the vote was split. He noted that a lot of the neighbors were against the petition the first few times and were neutral or in support the third time. He said he did not feel that the Board made any procedural errors.

Mr. LeMay stated that he would include his prior comments.

The motion to deny the request for rehearing passed with all in favor, 6-0.

III. PUBLIC HEARINGS – OLD BUSINESS

- 1) Case #7-12
 - Petitioner: New England Glory, LLC
 - Property: 525 Maplewood Avenue
 - Assessor Plan 209, Lot 85
 - Zoning District: General Residence A
 - Description: Creation of two lots where one exists. Construct building with four dwelling units.
 - 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 #1.41 to allow four dwelling units in a district where the use is only allowed by Special Exception.
 - 2. Variances from Section 10.1114.21 to allow an 18'± maneuvering aisle and a 20'± access aisle where 24' is required for both.
 - 3. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,755± s.f. where 7,500 s.f. is the minimum required.

(This petition has been postponed from the September 15, 2015 meeting and modified by the addition of Requests #1 and #2.)

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant. He reviewed the previous findings of the Technical Advisory Commission (TAC) and said that they incorporated all their suggestions. He then reviewed the criteria for variances and special exemptions and stated that the application met them.

Mr. Johnson said the problem he had was the driveway location and the claim that it did not cause problems for the busy intersection. He asked whether the New Hampshire Department of Transportation (NHDOT) should be involved because of the bridge. Attorney Pelech stated that the bridge was governed by NHDOT, and the City governed the area off the bridge.

Mr. Moretti asked whether the lot up against the highway would be developed and said he was concerned about the lot's egress. Attorney Pelech said he wasn't sure who owned the lot and knew there used to be a street providing access to the old yellow house, but it no longer existed.

Vice-Chair Rheume stated that the lot area per dwelling unit was 3,755 s.f., which was the current Cutts Mansion lot. He asked whether it was correct that it was a total of 12 units, based on the eight apartments in the Cutts Mansion plus the four in the former carriage house. Attorney Pelech agreed but said that the number of units in the Cutts Mansion would be reduced to six, so it would be a total of 14 units counting the four in the carriage house and four in the new structure. Mr. Rheume asked why the applicant went for 3,755 feet. Attorney Pelech said they had to apply for what currently existed and not for what they wanted to do in the future. As far as timing, Attorney Pelech said they would consolidate two more units into one unit, which would reduce it from eight to six units.

Vice-Chair Rheume asked for more detail about the hardship aspect. Attorney Pelech said they required a variance because all the lots located on one part of the ell pushed the density to the 3,765 square feet. He said the lot size was not the issue. The issue was the existence of the units in the Cutts Mansion and the carriage house, which put the density on that proposed lot above the required. He said that, whatever the density presently was, it would be the same density. Vice-Chair Rheume noted that the property had a history of many changes and relief, and he asked Attorney Pelech why his client should be granted another variance. Attorney Pelech said his client spent a lot of money improving the property.

Mr. Parrott asked what the different colored flags on the vacant lot meant. Attorney Pelech said he thought they might stake out different parts of the property. Mr. Parrott then asked what the plan was for the two large old trees on Lot 2. Attorney Pelech said the applicant had to go back to TAC and the Planning Board, but they wanted to remove only the trees that were in the access way. Mr. Parrott asked whether some of the new guard rail would be removed. Attorney Pelech said 35 feet of it would be removed because of the grade differential. Mr. Parrott said he was concerned about the concrete retaining wall, and Attorney Pelech said he didn't think it would be removed.

Mr. LeMay said he was concerned when the reduction of units in the Cutts Mansion would happen. Attorney Pelech suggested stipulating that the number of units in the mansion be reduced to six units.

SPEAKING IN OPPOSITION TO THE PETITION

Johanna Lyons of 18 Cutts Street stated that she submitted a package to the Board and was in opposition to further development on the property because she felt that it would create more impervious surface and bring big development into a neighborhood of single-family homes. She also noted that there was no conservation plans for the mansion. She felt the applicant had no hardship because he already had historical variances in hand to build 14 units and also felt he didn't have to change the lot boundaries.

Deirdre Wallace, an abutter, stated that she previously spoke about her concerns about the driveway and curb cuts and that she agreed with Ms. Lyons about the density levels.

Terry Blake of 2 Beechwood Street said she agreed with Ms. Lyons and Ms. Wallace and thought the lot coverage percentage was already out of compliance with Zoning. She said additional units should not be granted. She also noted that 20-30% of the new sidewalk would be obliterated by the driveway.

Linda Marshall of 4 Ashland Street said she was concerned about the parking situation and increased traffic and would prefer not to see anything added to the property.

Phil Harrison of 85 Leslie Drive said he was against the project and shared concerns about the parking and increased traffic. He felt that adding a substantial driveway would cause safety and traffic concerns, and he didn't know what the hardship was.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech stated that TAC's traffic and safety representatives reviewed the issues and recommended the access plan as presented. He said the project had no connection to Leslie Drive and would not create additional parking but would most likely decrease it due to the reduction of units in the carriage house. He said if parking was a problem, it was an enforcement issue.

Phil Harrison stated that Leslie Drive was an abutter and the parking issue was on Cutts Street, and it related to the property because it dealt with the traffic being currently utilized at the property. He said the available parking on site was insufficient, causing cars to be parked on Cutts Street. He emphasized how dangerous the intersection was and said the project would add more traffic and safety problems.

Terry Blake said the size of the driveway would add more problems to the intersection.

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

DECISION OF THE BOARD

Mr. Johnson stated that he had no problem with most of the relief requested but was concerned about the driveway because it was an important part of the criteria for the special exception. He said he didn't think the traffic would increase significantly, but he didn't feel it was a smart way to add a curb cut.

Mr. Lee agreed with Mr. Johnson about the driveway and thought it was a busy access point. Mr. Parrott said he couldn't find a significant definition of a hardship that satisfied the variance criteria. He said he agreed with the previous comments about the driveway cut and said that he had watched the cars come over the hill that day and it didn't work for him, common-sense wise. He found it incredible that a new guard rail that was designed for a good reason would be shortened by 35 feet.

Chairman Witham said he struggled with the hardship request as well. The variance was authorized for 14 units, and it had happened in 1999 but with 13 stipulations, so he knew the Board must have been desperate to have something positive happen to the property. He said he had discussed the concern to have something positive happen and the amount of sacrifice made in allowing 14 units in the two existing dwelling buildings. He still felt, however, that substantial relief was being asked for the two properties. He recommended a stipulation that only six units would be in the main house, which would help the parking issue. He said he hadn't heard anything strong about a hardship issue. He also wasn't as concerned as TAC was with the driveway because he didn't think there was that much traffic. He felt that the guardrail was there due to a drop-off, but the proposal was to have something graded up to the same level as Maplewood Avenue, so the use was no longer there. He said he was very concerned about the overall density and the amount of relief being asked for.

*Mr. Johnson made a motion to **deny** the special exception and all the variances. Vice-Chair Rheume seconded the motion.*

Mr. Johnson said that the special exception was held to the same standard as the denial of the variances. The applicant did not meet the merits required for Criteria #4 relative to no creation of a traffic safety or hazard. He felt that there was a chance for increased safety hazard, based on his comments and the comments of a few Board members and the abutters, due to the curb cut and driveway in relation to the bypass bridge and on/off ramp to the bypass. He said that the 18' maneuvering aisle would really not be needed. He concluded that he did not find a proven hardship on both variances.

Vice-Chair Rheume said he would focus on his concerns with the variances for the density and that he was somewhat torn. He said the applicant was trying to increase the amount of available housing in a location that made sense, but there were things that didn't make sense, even with special exception. He

noted the other Board members' concerns about the gully and the new bridge and approach ramps that created an awkward location for an additional dwelling area as well as complications for street access. As for total density, there had always been a lot of relief granted, and he was struggling to find an actual hardship other than the applicant's desire to make further use of the space on the property. He agreed that it was a big property, but he felt that there were already a lot of units on the property. He said he still remained unconvinced that the property was unique. He believed the application failed primarily on the hardship criteria and also in the spirit of the Ordinance criteria.

Chairman Witham said his biggest concern was the density issue. He said it was easy to say that four small apartments would be removed and four large ones would be put in, but they would have a structure that seemed to be larger than the Cutts Mansion itself. He said the slope of the land made the property unique, but he wasn't sure it was a hardship. He could live with the driveway cut and the 1999 variances that allowed the 14 units to occur. However, he felt that they were spreading those 14 units out into three buildings, and he wasn't comfortable with the density issue.

*The motion to deny the application **passed** with all in favor, 7-0.*

IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case #3-1

Petitioner: Everard E. Hatch

Property: 45 Mill Pond Way

Assessor Plan 143, Lot 11

Zoning District: General Residence A

Description: Add dwelling unit in existing attached garage.

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 10.521 to allow a lot area per dwelling unit of 7,467± s.f. where 7,500 s.f. is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Everard Hatch said the plan was to put a one-bedroom apartment over the garage. He said it would not expand the footprint, although the dormer on the back would expand the roofline slightly, and it would not change the appearance of the front façade.

Chairman Witham noted that the five criteria were addressed in Mr. Hatch's submittal.

Mr. Johnson asked whether the addition would be a rental, and Mr. Hatch said it would.

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

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

DECISION OF THE BOARD

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

Mr. LeMay stated that it was a straightforward petition and that it was a half-percent reduction in the area on a lot that was losing some area due to its shape. He said it was hard to argue that it would not meet the spirit of the Ordinance for light and air for such a tiny deviation.

Mr. LeMay stated that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because it would not change the nature of the neighborhood by allowing an existing structure, even with the small dormer addition. Substantial justice would be done and the benefit would not be outweighed by any public benefit because there was no public interest in the small square footage. The value of surrounding properties would not be diminished. Literal enforcement would result in a hardship to the owner by restricting it based on 33 feet out of 15,000 square feet, and he felt it would be unreasonable, considering the general state of compliance throughout the City.

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

Vice-Chair Rheume said he would support it because the Board had discussed new housing in the City and it seemed to be reasonable accommodations and zoned properly for multiple units.

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

2) Case #3-2

Petitioners: Virginia Copeland c/o James R. Copeland, owners, Seacoast Roadside Services, applicant

Property: 378 Banfield Road, Unit E

Assessor Plan 266, Lot 7

Zoning District: Industrial

Description: Use a portion of the property as an impound lot.

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 #11.40 to allow an impound lot in a district where the use is only allowed by Special Exception.

SPEAKING IN FAVOR OF THE PETITION

Matthew Porter, the owner of Seacoast Roadside Services, reviewed his petition.

Vice-Chair Rheume asked whether the property was being used by someone else and how long the business had been in that location. Mr. Porter said it was being used only by himself and that he had been there two months. In answer to further questions from Vice-Chair Rheume, Mr. Porter said the Planning Department had asked him to go before the Board and that he didn't have any vehicles in his lot that were the result of wrecks.

Mr. LeMay asked whether there would be parking for 90 days in a dirt lot, saying that he was concerned about dripping oil and fuels. Mr. Porter said the cars would be newer repossessed vehicles.

SPEAKING IN OPPOSITION TO THE PETITION

Betsy Ecker of 415 Banfield Road stated that she didn't think the owner stuck to the rules because there were 60-70 cars on the property, along with a mobile camper used as an office. She said the whole property was impervious and they were near a pond, and the stench was unbearable. She felt that the property was a health hazard and turning into a junkyard.

Vice-Chair Rheume asked Ms. Ecker if her property was the one in the southerly direction, and Ms. Ecker agreed. He asked whether the 60 cars were in the applicant's property. She said they were and that the areas in the back were getting congested.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Porter stated that his yard was 100 square feet' and that he had 11 cars. He said he was in back of several other businesses. Vice-Chair Rheume said that his advertisement stated that he had enough room to store 30 cars. Mr. Porter said he had 15 cars maximum most times and would be okay with less than 30.

Ms. Ecker said she was concerned that it would turn into another junk yard because it was a mess and she couldn't tell whose lot was whose.

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

DECISION OF THE BOARD

Chairman Witham said it seemed like there were other issues on the lot as well as some code-compliant ones that concerned him. He suggested that the Board stipulate that the City Inspector confirm that the property was in full compliance. Mr. Lee asked whether the property was fenced. Chairman Witham said they could stipulate that the 100 s.f. area be fenced in, or they could ask that a fence be installed between the property and the abutter's property.

Mr. LeMay said that the request was to park cars in an area of an impound lot where there already were cars being parked. He agreed that a fence could help, and he agreed about the code-compliance issues. Mr. Parrott said that the area had been a junkyard for a long time and looked like it was gradually moving back into that status. He said he drove by and it didn't seem organized or well-tended. He thought the automotive use was fine but felt that a clear demarcation of the use of the large lot made sense to him.

Vice-Chair Rheume said that what was being proposed was reasonable and that the Board could limit the number of cars up to 25. He wasn't sure if a fence would address the neighbor's concerns because a fence wouldn't help leakages into the water. He suggested stipulating that the code compliance be reviewed and that the City Inspector look at any other issues.

*Mr. Parrott made a motion to **grant** the special exception as presented and discussed with the following stipulations:*

- 1) that the particular part of lot proposed be clearly demarcated by corner posts or chains or something inexpensive so that it was clear where the section of the lot they were approving was; and*
- 2) that the Board ask the Code Compliance Officer to review the entire property relative to what was discussed and provide them with a report at the next meeting.*

Mr. Moretti seconded the motion.

Mr. Parrott said it was an unusual case because the applicant was asking for just a special exception in an industrial zone and an allowed use. He stated that granting the special exception would pose no hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. He said that given the remote location and the expansion of open space around it, populated by a few broken-down cars, it was part of for the protection of the public. There would be no detriment to property values

or change in the essential characteristics of the area, including residential or industrial areas, on account of the location. It had been used as automotive for a long time, and the houses were not that close to the land being requested for the impound lot. He said he was not concerned about smoke, gas, pollution, dust, and so on because it would basically be an outdoor parking area. Granting the special exception would pose no creation of traffic safety hazards or substantial increase in traffic because the property was a few hundred feet off the road. There would be no excessive demand on municipal services. There would be no significant increase in storm water runoff onto adjacent properties or streets because the adjacent properties and streets were a long distance from the location. He said it met the special exception criteria.

Mr. Moretti said he concurred with Mr. Parrott, adding that the property was automotive for several years and he was sure that the ground had some contamination. He said he didn't think that the repossessed new cars would have any fuel leakage.

Vice-Chair Rheume said he was in support but concerned with the second stipulation that the code compliance officer or building inspector provide a report back to the Board. He said he wasn't sure whether the board wanted to be in the middle of it and suggested the Planning Director instead.

Mr. Parrott said he would amend his motion and rephrase it to have the code compliance officer provide a copy of his report to the Zoning Board, the City Manager, and the Planning Director for informational purposes only and not to hold up the proposal.

Chairman Witham stated he thought the code compliance review should include looking at past variance requests and stipulations, like vegetation buffers and lighting, because there were a series of stipulations on the property that he felt the property should be in compliance with.

Mr. Parrott said he would add Chairman Witham's recommendation as a modification to his motion.

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

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- 3) Case #3-3
 - Petitioner: Bellwood Associates LTD Partnership, owner, Festival Fun Parks dba Water Country, applicant
 - Property: 2300 Lafayette Road
 - Assessor Plan 273, Lot 5
 - Zoning Districts: Industrial
 - Description: Construct six workers' dormitories and bath house.
 - 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 to allow six workers' dormitories and bath house where the use is not allowed by the Zoning Ordinance.

SPEAKING IN FAVOR OF THE PETITION

Colin Welch, the Director of Operations for Water Country, stated that they hired about 400 employees during the summer, 60 of which were international students from the J1 Program. It was required that there be safe and affordable housing, but there wasn't enough affordable housing in Portsmouth and local lodging was booked in the summer, so they wanted to build six dormitories and a bath house. Mr. Welch further explained how he would meet the five criteria.

Chairman Witham noted that the proposal had no common area nor kitchen, or laundry area, and he asked where the students would eat breakfast. Mr. Welch said they would set up a refrigerator and microwave in each building and would also have food facilities for them. He noted that they would build a common area in the future. Chairman Witham asked what the students would do with their groceries. Mr. Welch said what they would have would be better than a hotel room.

Mr. LeMay said the students would need a basic place to wash dishes. Mr. Welch said they had sinks in the bath house. Mr. LeMay said the J1 Program was a cultural exchange program whose main purpose was not to provide labor for the work force, and he asked what Water Country would do to teach the students about American culture. Mr. Welch said they would provide a sponsor for all cultural activities, would host monthly employee parties and weekly sports nights, and also do field trips to Boston or Portsmouth. Mr. LeMay then read some parts of the Federal Register relating to a plan to implement cultural activities. Mr. Welch said they included not just the J1 students but all students.

Mr. LeMay asked how many people staffed Water Country at one time. Mr. Welch said it depended on how hot it was, but normally went from 75 employees to 120 a day. He said the J1 employees got more pay to accommodate for living expenses and that sponsors helped pay for housing.

Mr. Johnson asked what the hours were. Mr. Welch said the hours were from 10:30 a.m. to 6:30 p.m. and that the park closed at 7:30. Mr. Johnson said he was concerned about access to the building using the public way, and he asked whether the students would have to walk through the parking lot to get to their residence. Mr. Welch said the parking lot would be lit up at night. Mr. Johnson pointed out that off-site and on-site safe travel and lit walkways were not part of the design yet. He felt that the communal space would have to be part of the present space because there needed to be congregation space. He stressed the need for more self-sustainability and more thought put into how the buildings were placed on the property and accessed, safety, and how the students would spend their time.

Vice-Chair Rheume noted that the proposed maximum was 60 beds and asked whether the only people in the dormitories would be the employees, and Mr. Welch agreed. He asked about people with disabilities. Mr. Welch said they hadn't had success with the physically disabled but could find jobs for the mentally disabled, such as ticket taking.

Mr. Moretti asked about night supervision. Mr. Welch said they would have 24-hour security and that the paved road into the park would be gated. In answer to further questions from Mr. Moretti, Mr. Welch stated that the dormitories would be winterized when the park closed for the season, but there would be no security personnel to monitor for vagrants except for a possible security camera.

Chairman Witham said that the Board had to ensure that it would be a safe environment for the 60 students. He said the students would go out at night and he was concerned that they would need flashlights to get back to the dorms. He said it needed to be part of the immediate plan and further thought out. Mr. Welch said it would not occur until the following season. Chairman Witham suggested that, instead of the Board denying or postponing the application, Mr. Welch flush out the proposal more.

Mr. Parrot said he had a lot of experience with summer camps and stressed the need for a designated gathering spot as well as a supervisor to act as a day-to-day contact. He said the lighting aspect was also important, especially around the exterior and gathering area.

John Hartman, the builder, rose to speak and stated that all the buildings met the code for transient workers and included lit pathways, fire alarms, and so on.

SPEAKING IN OPPOSITION TO THE PETITION OR

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Beckstead of 1395 Islington Street stated that he was not for or against the proposal but was concerned about traffic issues, how to exit the area, and the lack of sidewalks on Constitution Avenue.

No one else rose to speak, so Chairman Witham closed the public hearing.

DECISION OF THE BOARD

*Mr. Johnson made a motion to **postpone** the application to a further date so that the applicant could respond to the comments from the Board and concerned citizens. Mr. Moretti seconded the motion.*

Mr. Johnson said the Board had a healthy discussion on a well-supported concept that needed some refinement and felt it was in no one’s best interests to deny the application as presented. He thought it just needed more detail and attention to issues that were raised. He noted that more issues would be brought up at the site plan.

Mr. Moretti concurred with Mr. Johnson, adding that the overall plan was a great idea but lacked a few things. He thought it would pass with some refinements.

Vice-Chair Rheaume said he would support the motion because he wanted common areas emphasized.

*The motion to postpone the application **passed** with all in favor, 7-0.*

Chairman Witham stated that the Board would hear Cases #3-4 and #3-5 and postpone the other cases to the March 22nd meeting.

- 4) Case #3-4
 - Petitioner: Terry Bennett
 - Property: 211 Union Street
 - Assessor Plan 135, Lot 70
 - Zoning District: General Residence C
 - Description: Construct three-story building with eight dwelling units.
 - 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 1.53 to allow eight dwelling units in a district where the use is only allowed by Special Exception.
 2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 1,981± s.f. where 3,500 s.f. is required.
 3. A Variance from Section 10.521 to allow 55%± building coverage where 73% exists and 35% is the maximum allowed.
 4. A Variance from Section 10.114.21 to allow a 12’± maneuvering aisle where a 14’ maneuvering aisle is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix on behalf of applicant was present to speak to the petition and introduced the principals Jay McSheary and Dick Pruet, the designer Brendon McNamara, and the engineer Alec Ross.

Attorney Phoenix reviewed the property's history briefly, noting that the property housed residential rentals and covered 73% of the lot where 35% was permitted. He said the size of the existing lot and building and its value drove the economic redevelopment nature and that it had been left in the same eyesore condition for many years. They proposed 55% lot coverage, an open space of 32% compared to the existing 12%. He said that parking would be provided by placing 16 spaces under the building and that the proposed building would meet side and rear setbacks. He noted that a lot of police issues would be gotten rid of, and they also would reduce the in and out aisle to have more parking.

Mr. McNamara reviewed the history of the project, explained that four units would be on the second and third floors. He discussed how they came up with the school house look.

Vice-Chair Rheume noted the detail of the second floor plan (Exhibit 4) and said there was no similar breakdown for the third-floor units. Mr. McNamara said they were the same. Vice-Chair Rheume then noted that none of the renderings showed anything on the roof, and he asked whether the mechanicals would be visible from the streetscape or abutting neighbor. Mr. McNamara said they would not be visible from a normal streetscape. In answer to further questions from Vice-Chair Rheume, Mr. McNamara said there would be no noise concerns and that the design would be 4" brick veneer with granite skirting and half-inch tile brick.

In answer to Mr. Johnson's questions, Mr. McNamara said there was no parapet on the roof and the access would primarily be through the elevator from the garage due to the elevated nature of the lobby and first-floor area.

Chairman Witham asked what the target market was by offering three bedrooms. Mr. McNamara noted that the third bedroom didn't have a window and could be used as an office. He also said a young family would be attracted to a 3-bedroom unit.

Vice-Chair Rheume said he was concerned with the lot being lot compared to surrounding lots, and he asked whether there were design elements that addressed it and helped ensure proper drainage. Mr. McNamara replied that they would landscape the area between the properties, which would absorb water. Vice-Chair Rheume asked whether the units would be sold as condominiums and was told that they would. Mr. Johnson asked whether it could be marketed as a 3-bedroom unit, and Mr. McNamara said it could and that the Building Inspector would approve it.

Attorney Phoenix stated that they met with neighbors and offered to provide fencing or landscaping buffering in addition to the green space and storm water treatment. He said the City would eventually decommission the sewer line but that they would reroute it so it didn't go under the building. He said they had letters of support from various neighbors, which he named.

Attorney Phoenix then reviewed the special exceptions and variances in detail.

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

Todd Cramer of 199 Union Street stated that he supported the petition and confirmed the statements about police presence, noise, and the building being an eyesore. He said he had concerns about the UST and the demolition and suggested that the City's storm water drainage operations and maintenance plan be checked. He said the new building's location was within the existing setbacks and that the doubled height would darken his living space, but he praised the applicant's willingness to work within the setbacks and do fencing and landscaping options and hoped communications would continue with the developer.

No one else rose to speak, so Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Chairman Witham noted that the Board received two letters in opposition from residents of Cabot and Union Streets, one regarding parking and one on flooding issues, but he said that capturing the roof rain water would alleviate one of them.

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

Vice-Chair Rheume spoke about the property's history and his experience living nearby. He said that in recent times, the property had fallen into disrepair and that he also understood the need to have a certain number of dwelling units on such a large lot. The units were modest and the target demographic of first-time buyers or empty nesters was realistic, and he felt that the school house look enhanced the overall concept of the project and was appealing to the neighborhood. He said the applicant reached out to the neighbors and thought the abutters' concerns could be resolved. He said that the proposal would remove an eyesore and the new structure would contribute positively to the types of housing needed in Portsmouth. He also noted that the applicant worked hard to not put extra cars on the street and to ensure that the neighborhood would not be negatively impacted by parking problems.

Vice-Chair Rheume said that granting the special exception to allow eight dwelling units in a district where it was an allowed use met the first criteria. There would be no hazard to the public or adjacent properties on account of hazardous materials and no creation of a traffic safety hazard of substantial increase in traffic congestion. The ingress and egress from the garage were well designed. There would be no excessive demand on municipal services, including water, sewer, waste, and fire protection because it would increase the number of residences but not excessively for the neighborhood. There would be no significant increase in storm water runoff because the applicant had addressed the issue and it would be going for site plan review. Granting the special exception would pose no detriment to property values in the vicinity or changes in the essential characteristics of any area because the schoolhouse look was good for the neighborhood and would fit in. There was a general lack of opposition. The overall density and height of the neighborhood supported a structure of that size, so it wouldn't be out of place.

Vice-Chair Rheume next addressed the two variances. He said that the maneuvering aisles were straightforward and people would know the layout within the garage and wouldn't run into one another. He said the building coverage was the bigger issue, but the applicant would reduce it substantially and it was proven that it would be kept within the neighborhood. Granting the variance would not be contrary to the public interest because the public would not outweigh the applicant's needs for the property. The property met the essential characteristics of the neighborhood. It would observe the spirit of the Ordinance because the biggest relief was for the building coverage and it would be less, with substantial improvements. It would do substantial justice because it would allow the owner to do something economically feasible with the large lot to convert it into enough units to make sense to purchase and convert it. The benefit for the neighborhood would be getting rid of a large, odd structure and replacing it with a smaller and more pleasing structure. It would not diminish the values of surrounding properties. He said he had heard no arguments from the abutters or the public and felt that the property values would increase. Related to the hardship, Vice-Chair Rheume said it was an unusually large lot with an unusually large building, which created a situation where it was difficult to economically rehabilitate it in any way that would not require relief. The use was a reasonable one.

Mr. Parrott concurred with Vice-Chair Rheume and said that it was a residential use in a residential zone and was a number of units allowed by the Ordinance. The off-street parking aspect was a huge

improvement and would mitigate the variance with respect to the square footage per unit. Mr. Parrott said that, regarding the density aspect, it could be nothing but an improvement for the whole neighborhood, especially the nearby neighbors, to get rid of a long neglected building. He thought it was a good project and would be a great update for the building and would be a win-win situation for everyone.

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

5) Case #3-5

Petitioners: Walter W. & Patricia B. Bardenwerper

Property: 69 Hunking Street

Assessor Plan 103, Lot 40

Zoning District: General Residence B

Description: Install 4'± high fence with gates along stone wall on corner 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 516.30 to allow a fence to be installed on a corner lot at the edge of the street line within 20' of the intersection.

SPEAKING IN FAVOR OF THE PETITION

The owner Walter Bardenwerper stated that the Board had his presentation with details on how it met the requirements. He noted that the fence was for safety because his parking spaces were across the street and all egress involved crossing that street. There was zero visibility of oncoming traffic. He also stated that the abutters, the Wentworth-Gardner Museum and the Tobias Lear House, fully supported his application as well as Geno's across the street.

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

No one rose to speak, so Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Mr. Moretti made a motion to grant the variance. Mr. Lee seconded the motion.

Mr. Moretti stated that granting the variance would not be contrary to the public interest because the fence would be installed where fences had once been before. The fence was historically accurate to the house and the area that it was going into. Granting the variance would observe the spirit of the Ordinance and allow people to use the property properly. It would do substantial justice because the fence was not a building or blockage, would allow visible sight, add esthetics to the house, and improve the views around the house. Granting the variance would not diminish the value of surrounding properties because the fence would add to the historic aspect of the house and the neighborhood would benefit. The hardship was the tight lot and the stone wall up against the street, and the fence would be in the most optimal spot.

Mr. Lee concurred with Mr. Moretti, noting that the fence would add to the children's safety.

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

6) Case #3-6

Petitioners: Frank W. Getman, Jr. & Ingrid C. Getman

Property: 606 Union Street

Assessor Plan 132, Lot 20-1A

Zoning District: General Residence A

Description: Modification to a previous approval to construct a second single-family home 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 10.513 to allow a second free-standing dwelling unit on a lot where only one free-standing unit is allowed.

*This petition was **postponed** to the March 22, 2016 meeting.*

7) Case #3-7

Petitioner: Kayla Realty LLC

Property: 60-62 Market Street

Assessor Plan 117, Lot 34

Zoning District: Character District 5

Description: Provide rooms for guest housing.

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 to allow the creation of rooms to provide guest housing for non-family members within an existing dwelling unit where such use is not allowed.

*This petition was **postponed** to the March 22, 2016 meeting.*

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 11:10 p.m.*

Respectfully submitted,

Joann Breault
Recording Secretary