

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

**7:00 P.M.**

**MARCH 22, 2016 RECONVENED  
From March 15, 2016**

**MEMBERS PRESENT:** Arthur Parrott, Charles LeMay, Jeremiah Johnson,  
Christopher Mulligan, James Lee, Peter McDonell

**MEMBERS EXCUSED:** Chairman David Witham, Vice-Chairman David Rheame,  
Patrick Moretti

**ALSO PRESENT:** Planning Department: Jane Ferrini

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Prior to commencement of the meeting, it was moved, seconded and passed to appoint Mr. LeMay as Acting Chairman for the meeting in the absence of the Chairman and Vice-Chairman.

**IV. PUBLIC HEARINGS – NEW BUSINESS (Continued from March 15, 2016)**

- 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 from the March 15, 2016 meeting.)*

**SPEAKING IN FAVOR OF THE PETITION**

The contractor Matt Silva was present on behalf of the applicant to speak to the petition. Mr. Silva gave a brief history of the property and said the Board previously approved the structure for the second dwelling unit as well as the garage. He said the freestanding garage was removed and parking was placed under the structure, resulting in having to move the home dwelling ten feet further toward the center of the property. He noted that

moving the structure to the center was an improvement that would put it further away from the abutters and would lessen the impact on the property by having one less addition on the property. Mr. Silva said he had letters of approval from two abutters. He explained in detail how the petition would meet the criteria.

Mr. Johnson asked whether the letter of approval Mr. Silva had was from the same person who had previously spoken against the project, and Mr. Silva said it was.

Mr. Mulligan confirmed with Mr. Silva that the current proposal was a modification and it was the same requested relief, but for a different location. In response to further questions from Mr. Mulligan, Mr. Silva said the last project had a free-standing dwelling and garage proposed, and the current request would simply be a free-standing dwelling.

Acting Chairman LeMay asked how the building's elevation was different in height and footprint. Mr. Silva replied that he didn't think there was anything other than a promise to a footprint. He said the original application for the requested variance brought the structure up to 35.4 feet, but since there was a 35-foot height requirement, they had a new plan stating that they would be within that requirement.

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

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

#### **DECISION OF THE BOARD**

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

Mr. Mulligan stated that the Board approved a similar application a few months before, and he felt that the current application was an improvement that met all the criteria necessary to grant the variance. He said the large lot had three times the required lot area per dwelling unit in that particular zone. He said the applicant would be in his right to demolish or add on to the carriage house, as long as they were connected in one single freestanding building, which didn't make sense for the property. He said that what was proposed was better but required relief.

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance. The Board had to see whether the variance would alter the essential characteristics of the neighborhood or threaten the health, safety or welfare of the public, and neither would be the case. He said that the essential characteristics of the neighborhood would remain intact and the health, safety and welfare would not be impacted by a single dwelling. It was a fairly large lot that wouldn't be overcrowded by one additional dwelling. He said granting the variance would result in substantial justice. The Board's job was to weigh the loss to the applicant if the variance was denied against the benefit to the public, and he didn't see what the benefit would be to the public. The

applicant could demolish or carve up the historic carriage house and achieve the same result, and that would be a loss to the public.

Mr. Mulligan said granting the variance would not diminish the values of surrounding properties because there would be new construction as well as the historic preservation of the carriage house. There would be a substantial investment in the property, and the surrounding properties would be enhanced. Literal enforcement of the Ordinance would result in unnecessary hardship. The lot had almost three times the required lot area per dwelling unit, and the property was already home to a historic carriage house that should be preserved, so there were no special conditions of the property that distinguished it from others in the area, and there was no fair and substantial relationship between the purpose of the Ordinance and the application to the property. He said the use was a reasonable one, and for all the reasons stated, the variance should be granted.

Mr. Johnson said he concurred with Mr. Mulligan. He said that the density was already allowed per the zone and the site itself allowed for the built environment. He said that sometimes properties didn't logically allow for it, but he felt that the project did because it was large enough and was appropriately sited. He applauded the applicant for retaining the carriage house and thought it would be a great project.

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

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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 from the March 15, 2016 meeting.)*

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

Attorney Jonathan Flagg on behalf of the tenant Paul Sorli and the owner Kayla Realty LLC was present to speak to the petition. He stated that the application was unique because single-family dwellings were a permitted use in that area. He explained the background, noting that Mr. Sorli, who also owned the Gaslight Restaurant, used to live on the second floor of the building but moved to the third floor when a commercial business rented the second floor. The business moved out, and Mr. Sorli wanted to convert the second floor back to residential use. Attorney Flagg said the third-floor

kitchen would be part of the second floor and that the J1 Program exchange students would live there temporarily. He reviewed how the project would meet all five criteria and emphasized that the J1 students would be guests and would not pay to live there.

Mr. Johnson asked about the kitchen access. Attorney Flagg said the second floor had two bedrooms and two showers, and access to the third-floor kitchen.

Mr. LeMay asked how it was constructed and whether the maximum would be four people. Attorney Flagg said there were stairs leading to the third floor, and two means of egress, and that they would work with the City's Building Inspector on electrical issues. He said four people were typical because there were two bedrooms and two showers.

Mr. Mulligan said if the J1 issue was removed and Mr. Sorli wanted to expand the second floor for his own family, the requested relief would not be necessary. Attorney Flagg agreed, stating that the definition of family was anyone related and 2-3 non-related parties. Technically, they were asking for one additional person beyond what the Ordinance allowed. Mr. Mulligan asked what the space was presently used for. Attorney Flagg said it had been vacant for five years.

Mr. Johnson asked whether there was a sprinkler system and whether there were preliminary discussions with the Building Inspector. Attorney Flagg said there was no sprinkler system and that there was a fire protection engineer involved in the process.

Mr. McDonell asked whether the sponsor gave a housing allowance. Attorney Flagg said he didn't. He said the students normally received an income and rented motel, but Mr. Sorli would let them stay there for free because he felt a passion for the J1 Program. Mr. McDonell asked where the students stayed before, and Attorney Flagg said they stayed on the second floor because it was vacant.

At that point, Mr. Sorli rose to speak, saying that the students were also employed at his restaurant. He further explained how he discovered that the City's permission was for the students to live in the apartment building.

Mr. Parrott asked Attorney Flagg whether the space had been used before in a similar fashion and whether the City had checked the lifesaving codes. Attorney Flagg said the issue was raised when the recent fire occurred at the Gaslight, noting that it wasn't previously viewed as a requirement because it was considered part of Mr. Sorli's residence. He said all life safety requirements would be met. Mr. Parrott asked how the space would be identified as one unit. Attorney Flagg confirmed that it was be one housing unit consisting of the second and third floors. He said there was no separation other than a flight of stairs. In answer to further questions from Mr. Parrott, he emphasized that it was not a separate living unit and would not be rented out and would be clearly identified to the City as a two-unit building, with commercial use on the first floor and residential use on the second and third floors.

## **SPEAKING IN OPPOSITION TO THE PETITION OR**

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

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

**DECISION OF THE BOARD**

Mr. Mulligan said he had no problem with the petition because the definition of family in the Ordinance included up to three unrelated individuals in the same dwelling, and he felt it wasn't asking for a lot of additional relief. He also noted that the use had occurred for many years without any known consequences.

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

*Mr. Mulligan suggested adding a **stipulation** that the Board approve the petition for the use of no more than four residents on the second floor at any one time.*

Acting Chairman LeMay asked whether there should be a stipulation that there be no rent, but Mr. Mulligan said it wasn't necessary.

*Mr. Parrott agreed with the stipulation.*

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because he didn't think the health, safety, and welfare of the public or the essential characteristics of the neighborhood would be affected. He noted that the applicant could put his own children on the second floor without any relief at all and the use would be identical, but the folks would be unrelated and would live there for seasonal short periods of time.

Mr. Mulligan said granting the variance would result in substantial justice because the loss to the applicant would outweigh the gain to the public. The Ordinance defined family in such a way that there could be up to three unrelated people living in the space without relief, and it would only be one more than three, so he didn't think it was a significant change. Granting the variance would not diminish the values of surrounding properties because once the petition was granted, there would be a full code compliance review of the property, and the applicant would be forced to bring it up to existing code. It would be a substantial investment and would have a positive impact on values of surrounding properties. Mr. Mulligan said that literal enforcement would result in unnecessary hardship due to the special conditions of the property. It was previously a residential space converted into commercial space, and the commercial space was discontinued. The residential use was a natural use for that particular space, and the applicant did it not knowing that it slightly violated the Ordinance. He said there was no fair and substantial relationship between the definition of a family and its application to the property, and that the residential use was an appropriate use of the space.

Mr. Parrott said he concurred with Mr. Mulligan. He said it was an unusual space, and he hoped that no one considered it a precedent-setting change, especially in respect to the Air B&B situations that would come before the Board in the future. He reiterated that the approval applied strictly to the unusual situation.

Mr. Johnson said he would support it, noting that he was unreceptive to it at first but felt it was important that a fire protection engineer would be involved. He said that lifesaving codes could be a tricky thing and felt that some departments could be a bit lax when it came to residential use because there was an assumption of familiarity with the property and the residence. He said with that type of use, the request would be minor, but because a group of students would be placed in an unfamiliar environment, he felt more at ease knowing that the Building Department would be involved.

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

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## **V. OTHER BUSINESS**

There was no other business.

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## **VI. ADJOURNMENT**

The meeting was adjourned at 7:45 p.m.