

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

7:00 P.M.

APRIL 19, 2016 TO BE
RECONVENED APRIL 26, 2016

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman David Rheume, Charles LeMay, Patrick Moretti, Christopher Mulligan, Arthur Parrott, Alternate: James Lee

MEMBERS EXCUSED: Jeremiah Johnson, Alternate: Peter McDonell

ALSO PRESENT: Jane Ferrini

I. APPROVAL OF MINUTES

- A) March 15, 2016
- B) March 22, 2016

*It was moved, seconded, and passed by unanimous vote to **approve** both sets of minutes with minor corrections on the March 22 minutes.*

II. OLD BUSINESS

- A) Request for Extension for property located at 56 Lois Street.

*Vice-Chair Rheume made a motion to **grant** the Request for Extension, and Mr. LeMay seconded.*

Vice-Chair Rheume stated that the property had some contentiousness associated with it, which created some delay in the application moving forward due to legal issues. He said the extension was acceptable.

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

*The motion **passed** by a vote of 7-0.*

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- A) Request for Rehearing regarding property located at 525 Maplewood Avenue.

In advance of the scheduled meeting on 4-26-2016, the Board considered the Request for Rehearing.

Mr. Mulligan recused himself from the vote.

Vice-Chair Rheume stated that the applicant was required to go to the Technical Advisory Committee (TAC) for additional information. The Board had indicated that they had a positive interest in approving the application if it went to TAC, but their subsequent action to deny it was harmfully perceived by the Minutes Approved 5-17-16.

applicant. Vice-Chair Rheume said that the fact the Board required TAC's input was reflective of their reluctance, and he felt it should have been an indication to the applicant that approval would not be simple. He said the Board reviewed TAC's recommendations and found them satisfactory in some areas but wanting in others, and they chose to deny it. He said the applicant brought forward arguments about additional information from an engineering consultant that the used, but it was only a portion of what the Board had concerns with. Vice-Chair Rheume stated that he focused on the density and the nature of the proposal, and nothing that the potential witness would have testified to, so he saw nothing indicating that the Board made an error.

Chairman Witham said he agreed with Vice-Chair Rheume. He said that part of the problem was that the original submittal was very weak in terms of information and the Board had no sense of what they were signing up for regarding the driveway and the footprint, so it drove them to get more information. He said that TAC was only one piece of the puzzle and felt that it was wise of the Board to get feedback from the City for the driveway, but one of his main concerns had been density, which was the issue that made him vote against the petition. He said that the Request for ReHearing tried to make a strong case for the fact that the application was approved by TAC, but he felt there was much more to it and felt it was evident that the application would have been denied that night if the Board had not asked the applicant to pursue further information from TAC. When the information from TAC was submitted, he said it wasn't enough for the Board to grant the approval.

Mr. Parrott said he agreed with the comments from Chairman Witham and Vice-Chair Rheume. Upon reading the minutes of the TAC meetings, he said that it only reinforced his concerns and added several more, and it also illustrated how unusual the site was. He felt that all parties concerned proceeded with caution to make sure it was viable. He said he felt that the density concerns of the Board as well as other traditional concerns were made to seem like veiled criticism of them for sending something to TAC, which he found amazing because it was in the Board's jurisdiction to do so. The project had a complexity and he felt that it was a well-advised action, based on the report from TAC.

Mr. LeMay said that he agreed, and he thanked TAC for the many meetings they had and all the effort they put into it, saying they did a substantial amount of work to understand the proposal and organize it for the Board. He said he found nothing in the proposal and nothing persuasive in terms of error, so he therefore recommended denying the Request for Rehearing.

*Vice-Chair Rheume made a motion to **deny** the Request for Rehearing, and Mr. Parrott seconded the motion.*

Vice-Chair Rheume stated that he echoed his previous comments in regards to TAC. He said the Board looked at things but had to take the information TAC provided and make an informed decision about the merits of a particular case. He said the additional testimony wouldn't address all their concerns.

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

*The motion **passed** by a vote of 6-0.*

Chairman Witham advised that the following petition would be addressed out of order due to a request to postpone and in consideration of members of the public that might be there to speak to the petition.

Mr. Mulligan recused himself from the following petition.

7) Case #4-7

Petitioners: Stewart Whitney & Haiyan Chao Whitney

Property: 180 Wibird Street

Assessor Plan 148, Lot 1-1

Zoning District: General Residence A

Description: Construct two second story decks.

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 30.3%± building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE REQUEST TO POSTPONE

Christopher Mulligan stated that he would represent the applicant in presenting a request to postpone the petition to the May meeting. He noted that another attorney in his firm represented them and, while he was away and couldn't be reached, a letter of opposition was submitted to the Board which raised significant issues which the applicant wished to have an opportunity to address. They spoke to the request to postpone. He stated that they wanted to postpone the petition to May because the applicant's attorney was out of town when a letter of opposition was submitted to the Board and raised significant issues. They wanted to postpone the petition to the May meeting to allow time to address the objections.

SPEAKING IN OPPOSITION TO THE REQUEST TO POSTPONE OR SPEAKING TO, FOR, OR AGAINST THE REQUEST

There was no public comment.

DECISION OF THE BOARD

*Mr. Parrott made a motion to **postpone** the application to the May 17, 2016 meeting, and Mr. Lee seconded.*

Mr. Parrott stated that it was the first request to postpone and that the Board traditionally granted those requests without much ado. He said he felt the application fell within that category.

Mr. Lee said he concurred with Mr. Parrott.

Vice-Chair Rheume said he found it a bit disconcerting that the request for postponement came at the last minute and was based on the abutters' concerns, which generally didn't hold up progress. He said if there was an opportunity for a win-win situation, he was willing to give the applicant a month.

Chairman Witham said he could not support the motion because he felt that, just because there was some opposition that the applicant wasn't ready for, it wasn't enough grounds for postponement. He said the petition was controversial the first time in terms of the unmerged lot situation, and he felt that the applicant should have reached out to the neighbors before coming before the Board. He said that the applicant should have simply presented the project and found out whether or not it held up on its own merits. He said he was worried about a precedent and would not support it.

*The motion to postpone the petition to the May meeting **passed** by a vote of 4-2, with Mr. LeMay and Chairman Witham voting against the motion.*

III. PUBLIC HEARINGS – OLD BUSINESS

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.

(This petition was postponed for additional information at the March 15, 2016 meeting.)

SPEAKING IN FAVOR OF THE PETITION

Mr. Mulligan resumed his voting seat.

Colin Lynch, Director of Operations at Water Country, was present to speak to the petition. He stated that they still met the five criteria by their recent adjustments to the petition. He said they added two structures, one that would serve as a pavilion for socializing, and the other having cabinet space for food storage along with tables and chairs. He said the students would be able to prepare and cook their own food. He explained in detail how the lighting and security were updated, and he said they would name a few students as security monitors.

Vice-Chair Rheume asked whether the cooking grills would be gas and was told that they would. He asked for more detail on the lighting. Mr. Lynch said there would be ample lighting around the pavilion as well as lights along the pathways and around the building along the road that led to Constitution Avenue. He said there would be lights inside and outside of the parking lots. Vice-Chair Rheume asked whether there would be an active security review of events or just passive recording using the security cameras. Mr. Lynch replied that the overnight guards would watch the security monitoring and it would also be recorded on a DVR system for review, if necessary.

Chairman Witham asked Mr. Lynch whether he would agree to a stipulation stating that the use of the park was strictly for Water Country employees, to avoid the option of renting it out to someone else when not in use. Mr. Lynch said he would agree to the stipulation. Chairman Witham asked whether Mr. Lynch would need the employees the weeks before and after the season. Mr. Lynch said it would depend on what country the employee came from, due to different requirements of various countries, but he said it would most likely be the last week of May and the week after Labor Day.

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

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

DECISION OF THE BOARD

*Vice-Chair Rheume made a motion to **grant** the petition as presented and advertised with the following stipulations:*

- 1)

Minutes Approved 5-17-16.

- 2) *That the employee limit would be 60 persons; and*
- 3) *That the occupancy would be for Water Country employees only and that it would be limited to the operating season of May through September.*

Mr. Parrott seconded the motion.

Vice-Chair Rheume stated that the applicant did a good job of addressing the Board's concerns. He said it was an interesting situation and something that would increasingly occur because many Portsmouth businesses would want to get adequate staffing due to the lack of employment candidates.

Vice-Chair Rheume stated that granting the variance would not be contrary to the public interest, which was that the employees would be housed in a fair and reasonable manner that would protect their safety and the public's safety. They would be treated in a respectful manner and would be able to take care of themselves and not be a public nuisance, which was in the public interest. He said it was an unusual situation as far as a business with a housing structure on it and not something the Board had really approved before, but it was something they had to consider with the current nature of available housing in the community and also had to support that type of business with the required workforce. Vice-Chair Rheume stated that granting the variance would not be contrary to the spirit of the Ordinance because the Board was ahead of the curve as far as where the Ordinance presently stood in that regard. Eventually the Board would see more cases and would have to consider them, along with the Planning Board and City Staff, and recognize those needs and expand the Ordinance. What was being asked for was a logical extension of some other things that the Ordinance allowed for. Substantial justice would be done by allowing the business to make use of their expansive property by housing the workers, meeting their business goals and providing entertainment for the State.

Vice-Chair Rheume stated that granting the variance would not diminish the values of surrounding properties because the large property was surrounded by other businesses and was not up against a residential neighborhood. It would be in keeping with the general nature of the area and would not negatively affect surrounding properties. As for the hardship, it was a very large property with a unique business that provided an entertainment service requiring a large number of employees. The property had enough space, and a unique portion of the space was suitable and had suitable access to areas that the students could use, including bus transportation, grocery stores, and so on. There was no fair and substantial relationship between the general public and the application, and considering the nature of the housing crisis, it was reasonable.

Mr. Parrott

said he concurred with Vice-Chair Rheume and added that he was sure Water Country would find that the changes they were willing to make would be a benefit to them and the employees. He said he endorsed the changes and was glad that Water Country was willing to make them.

*The motion **passed** by a vote of 7-0.*

IV. PUBLIC HEARINGS – NEW BUSINESS

- 1) Case #4-1
 Petitioners: Eric A & Jean M. Spear
 Property: 514 Middle Street
 Assessor Plan 135, Lot 19
 Zoning District: Mixed Residential Office
 Description: Add second dwelling unit in existing structure.

- 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 10.812 to allow the conversion of a pre-1980 building to two dwelling units.

It was acknowledged that this petition had been withdrawn by the applicant.

- 2) Case #4-2
- Petitioners: Arieh Katz Revocable Trust & Pamela J. Katz Revocable Trust
- Property: 462 Lincoln Avenue, #4
- Assessor Plan 133, Lot 20-4
- Zoning District: General Residence A
- Description: Construct a 6.5'± x 16.75'± one-story addition and a 13.5'± x 20'± two story addition on the right side of the existing building.
- 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 10.1'± secondary front yard setback where 15' is required.
 2. A Variance from Section 10.521 to allow 26.5%± building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The architect Anne Whitney was present on behalf of the applicant and stated that she had a sheet of abutters' signatures of approvals. She also passed out a tax map to the Board members. She said the building had four units, and all the tenants and the condominium association signed off on the addition. She explained the reasons that the additions were needed and also noted that the Ordinance had changed recently to accommodate the front setback. She reviewed the criteria and said they would be met.

Vice-Chair Rheume asked whether there was a need to have a written authorization of approval from the condominium association, seeing that there was approval from all the abutters in the remaining units. Ms. Whitney said the condominium association was the owner of record and had signed the petition, thus giving their approval. She said anything outside the City's scope had been vetted with the Board and that the association had made it clear that no one else in the building would be able to do a similar expansion.

Vice-Chair Rheume asked whether the existing bath on the second floor plan would remain, and Ms. Whitney agreed that it would. He verified with Ms. Whitney that the owners wanted to live on one floor and not go upstairs, and he asked her to expound on the architectural superior aspect. Ms. Whitney stated that the original owners originally wanted to build a garage and a studio but it soon became evident that two structures could not be added to the property, so part of the second floor would be the studio. Ms. Whitney gave more detail on why the additions were built the way they were.

Vice-Chair Rheume then asked Ms. Whitney to speak to the general character of the neighborhood, noting that the building was gorgeous and they were creating an asymmetry to what was presently a nice symmetric building. He asked Ms. Whitney whether anything in the neighborhood had inspired her. Ms. Whitney said there were several large Victorian asymmetric buildings with bays and turrets. She said they were stepping the building back from Lincoln Avenue to keep the front façade intact, and she felt that there was a mixture of typical small single-family residences and larger buildings in the neighborhood context that her project was in keeping with.

Mr. Moretti noted that the air conditioner had to be relocated to the front, and that there was a tree and some growth in front of it. Ms. Whitney said there was a fence on the edge and that the tree would most likely be pruned, but said they would accept a stipulation to put a fence enclosure in front of the relocated air conditioner.

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

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

DECISION OF THE BOARD

*Mr. LeMay made a motion to **grant** the petition as presented and advertised, and Mr. Lee seconded the motion.*

Mr. LeMay said the petition was straightforward and that he had to look at what the request was, which was a building with a lot that was separated with roads on three sides, thus having three frontages. He said if it were a side yard, the 10-ft setback would not require a variance, but he said the setback was typical for the area. In terms of the variance, he said it was reasonable, and in terms of the area, it was dimensionally small, so the relief was small. He thought the proposed work fit the neighborhood.

Mr. LeMay stated that granting the variances would not be contrary to the public interest, and the spirit of the Ordinance would be observed. He said it would not change the nature of the neighborhood and no public rights would be infringed. It would do substantial justice because it would benefit the applicant to modify their building to have it be functionally useful without challenging the other properties. It would not diminish the value of surrounding properties because it was not out of keeping with the area and would not affect the property values. As for the literal enforcement, he said the lot had streets on three sides, and the way the building was situated on the lot, to deny it to preserve the setback would cause an unreasonable hardship to the applicant.

Mr. Lee agreed with Mr. LeMay and said the relief sought was so small that the impact was minimal.

Mr. Moretti asked about the suggested stipulation to screen the condensers. *The makers of the motion, Mr. LeMay and Mr. Lee, agreed to add it to the motion.*

Vice-Chair Rheume stated that he would support the petition, even though he had some concern about the nature of a two-story addition. He felt that the actual relief was very minimal and noted that if the applicant were not up against the street, the side yard setback would be acceptable.

*The motion with the added stipulation **passed** by a vote of 7-0.*

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- 3) Case #4-3
 Petitioners: Daniel F. Ryan III & Annette M. Ryan Irrevocable Trusts, Daniel F. Ryan III & Annette M. Ryan, Trustees
 Property: 1059 Banfield Road
 Assessor Plan 294, Lot 4
 Zoning District: Single Residence A
 Description: Construct a 16'± x 12'± deck and stairs along a 15'± diameter above ground pool.
 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 12.09%± building coverage where 10% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owner Dan Ryan was present to speak to the petition and said he had nothing to add to what he already gave the Board. Chairman Witham stated that the packet was thorough and noted that Mr. Ryan had addressed the five criteria.

Vice-Chair Rheume said he had a Planning Department concern because the case was put forward in their Planning Department memo that the proposed rear yard was 30 feet and he had thought a second variance would be needed, but he felt it was okay.

Mr. LeMay asked whether there was a fence around the property. Mr. Ryan said there wasn't and noted that there was no requirement for one.

Mr. Moretti asked whether there would be a gate for the stairs access, and Mr. Ryan said he would install railings and a gate.

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

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

DECISION OF THE BOARD

*Mr. Moretti made a motion to **grant** the petition as presented and advertised, and Mr. Parrott seconded.*

Mr. Moretti said that the application was straightforward and a small request to have a deck to enjoy the pool in the backyard. He stated that granting the variance would not be contrary to the public interest because there had been no public input and the neighbors had not opposed it. He said the deck was behind the house and would not be seen much. Granting the variance would be in the spirit of the Ordinance because it was a small request for a small deck surrounding an existing pool and would be done in good test. He said that substantial justice would be done because it would allow the applicant to enjoy the pool and make it look like a permanent structure instead of a freestanding one and give the backyard substance. Mr. Moretti stated that granting the variance would not diminish the value of surrounding properties because the properties overlooked the pool, and the deck would add to the value of their properties as well as the owner's property. The hardship was that the pool was a freestanding one and without the deck, the pool was not totally enjoyable, and now it would be.

Mr. Parrott said he concurred with Mr. Moretti, adding that the pool was a longstanding use that had not caused anyone in the area heartache, and the deck would make it more usable, so it seemed logical.

*The motion **passed** by a vote of 7-0.*

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- 4) Case #4-4
 - Petitioners: Christiana M. Dadamo Rev.Tr., Christiana M. Dadamo, Trustee, owner,
Thomas M. Varley, Trustee of the Thomas M. Varley Revocable Trust & Heidi G. Varley, Trustee of the Heidi G. Varley Revocable Trust, applicants.
 - Property: 209 Lafayette Road
Assessor Plan 151, Lot 5
 - Zoning District: General Residence A
 - Description: Construct a second free-standing 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 10.513 to allow a second free-standing dwelling to be built on a lot.

SPEAKING IN FAVOR OF THE PETITION

Attorney Doug MacDonald on behalf of the applicant was present to speak to the petition. He also noted that Julie McDonald of DeStefano Architects was present. Attorney MacDonald stated that the petition pertained to the addition of an attached guest house and noted that, because of the way it was attached via a breezeway, it was considered a freestanding dwelling.

Ms. McDonald then spoke and stated that the new owner wanted a pool house oriented toward the pool, and she said the design was for light, privacy and esthetics. She said the house was hidden behind tall growth and difficult to see from the street. She reviewed the floor plans and noted that one sheet did not show the previous addition but that the existing house was linked to the garage.

Mr. LeMay asked whether the driveway went to Lafayette Road. Ms. McDonald said it would be maintained but would no longer be a drive-through driveway. She said they would extend the first porch deck to the underneath of the porte cochaire.

Chairman Witham asked whether the driveway would still be pavement, and Ms. McDonald agreed.

Vice-Chair Rheume noted some upper-story glazing on the guesthouse and asked whether there was a loft area. Ms. McDonald said there was a storage loft. Vice-Chair Rheume asked what design elements Ms. McDonald felt were negative to connecting the structure to the main house. Ms. McDonald said the existing first floor was so much higher that they had to make a viable connecting space, and the location of the pool also led them to use the extension. She said it was a thoughtful approach of what worked best for the house and the property.

Attorney MacDonald reviewed the criteria and how the application met them.

Vice-Chair Rheume asked whether the intent was to use the house as a guesthouse in the short term and as an in-law space in the longer term. Attorney MacDonald said it wasn't but thought that if the house was used as an in-law space in the future, it would be consistent with State Legislature.

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

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

DECISION OF THE BOARD

Chairman Witham noted that the Board had been getting a few more similar petitions and that they were at times presented as a guest house that he always thought could easily be rented out. In the applicant's case, he said the house had a pool and landscape and the guesthouse was ten feet from the pool, so he didn't think it would be rented out to strangers. He agreed that it could be an in-law residence in the future. He also noted that the property could easily have seven units on the lot, so the way it was designed seemed well thought out.

*Vice-Chair Rheume made a motion to **grant** the petition as presented and advertised, and Mr. Mulligan seconded the motion.*

Vice-Chair Rheume said he drove by the property many times and knew there was large hedging in front of it. He said it was a unique property with lots of neo-classical ornamentation and felt that everything proposed was a nice complement to the unique nature and its architectural appeal. He said there were arguments to move the application forward, including the fact that there was Legislation for various communities to figure out how they would do a by-right or CUP. He noted that it was also something the applicant could have gone forward with without coming to the Board. He went into more detail and summarized that he felt it was reasonable for the applicant to request the variance.

Vice-Chair Rheume stated that granting the variance would not be contrary to the public interest because the public interest was in not allowing lots of separate buildings on constrictive lots or multiple homes on a single property. He said that it would technically meet that definition, but with the connectivity and proposed layout and being a large property, he felt that it would not give that feeling. He said there was little that anyone could observe that would make them think there was a second dwelling unit. He stated that granting the variance would also observe the spirit of the Ordinance because the unique nature of the property and its size made sense to create a connected space. It would do substantial justice because it would make full use of the property and allow space for a future in-law or suite, with no public interest to outweigh it. Granting the variance would not diminish the value of surrounding properties. He said it could only further increase their values because it was such a large lot and was hidden. The hardship was that it was a large lot with unique architecture. He thought that what was proposed was reasonable and there was nothing for public interest to outweigh what the applicant was asking for.

Mr. Mulligan said he concurred with Vice-Chair Rheume and said it reminded him of another project on Union Street but was a very substantial dwelling on a very large lot. He said if the applicant wanted to connect the dwelling to the existing structure, he could do it without relief, but it would impact the integrity of the existing dwelling. He agreed that it was a unique property and thought it was unlikely that the applicant would under-invest in it as the project moved forward. He said it met all the criteria.

The motion passed by a vote of 7-0.

- 5) Case #4-5
Petitioners: Walter A. Hale IV & Lisa Marcucci Hale
Property: 165 Richards Avenue
Assessor Plan 129, Lot 40
Zoning District: General Residence A
Description: Raise and keep chickens.
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 #17.20 to allow the keeping of chickens where the keeping of farm animals is not allowed.

SPEAKING IN FAVOR OF THE PETITION

The owners Walter and Lisa Hale were present to speak to the petition. Ms. Hale stated that they wanted to keep chickens to teach their daughter about raising animals and eating fresh food. She said the coop would be located behind the house and would be hidden. She said that hens didn't make a lot of noise, and she promised there would be no roosters. She said they would keep the coop clean, and she said the neighbors approved of the coop. Ms. Hale said they would have no more than six chickens. She also noted that they had a shed on the back of their property and that the chicken coop would not be a permanent structure.

Mr. Mulligan noted that the location would be ten feet from the lot line but close to the house and relatively close to the nearest neighbor. He said it seemed from the zoning map that, if the coop was moved out to the southern corner of the property, it would be as far away from the neighbor's dwelling as possible, and he asked what the rationale was for siting the coop. Ms. Hale said the cedar trees would provide protection from weather and that the nook was also protected. They also had a small door from their basement which would be easy to get to the coop in the winter. Mr. Hale said they had a deck on the side of the house and could not put the coop in that location.

Vice-Chair Rheume asked what the neighbors thought of the coop. Ms. Hale replied that most of them were fine with the coop, and one was concerned about noise but seemed satisfied when Ms. Hale told her that chickens made no noise. She said the neighbors had been concerned whether the coop would be on their fence line, but she told them it would be on the opposite side.

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

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

DECISION OF THE BOARD

*Mr. Mulligan made a motion to **grant** the petition as approved and presented, with the stipulation that there be no more than six chicken and no roosters.*

Mr. Parrott seconded the motion.

Mr. Mulligan stated that the request for chickens came up every now and then, and he didn't think it would withstand a lot of scrutiny if there was significant opposition from the neighborhood, but the Board had not heard that. He said the petition barely met the criteria, but it did meet it.

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because the essential character of the neighborhood would remain a vibrant residential neighborhood and would not become a commercial farming neighborhood. He said it would result in substantial justice because if the loss to the applicant if denied against the gain to the public were balanced, there would be no gain to the public. There had been no opposition heard from the public. The neighbors had been spoken to, and the applicant was aware of their concerns. With respect to the lot coverage, Mr. Mulligan said it was a small amount of lot coverage over what already existed, slightly over what the maximum in that zone was, but he did not believe that making the applicant hold the line on it would result in substantial justice.

Mr. Mulligan stated that granting the variance would not diminish the value of surrounding properties. He didn't think it would have any effect on surrounding properties one way or the other. As far as literal enforcement, he said there were no special conditions of the property that distinguished it from the others in the area and that its backyard seemed to back up into four other backyards that were fairly devoid of structures and other uses. He said he originally thought that someone would want to keep animals as far away as possible from other dwellings, but the applicant indicated a number of good reasons why they were siting the coop where they were. He said if they had sited it in the rear of the yard, it would potentially affect the neighbor's backyard, so there would be no fair and substantial relationship to the purpose of the Ordinance and the application of the property. He said it was sited appropriately.

Mr. Parrott said he concurred with Mr. Mulligan and thought keeping the chicken coop was a benign activity. He said he knew a couple of families who had neighbors with a similar number of chickens, and there was no irritation factor, so he thought the Board could approve the application.

Mr. LeMay said he was concerned about it because the area was fairly dense and the coop had the potential to become a nuisance in the legal sense. He said he didn't think the applicant had reached a level of hardship, and although it sounded like a fine idea, he didn't think the Board was quite there, so he would not support it.

Vice-Chair Rheume said he shared some of Mr. LeMay's concerns. He noted that the Board had approved similar requests in larger properties, and he would support it because the open space behind the property lessened his concerns.

The motion passed by a vote of 6-1, with Mr. LeMay voting against the motion.

6) Case #4-6

Petitioners: Branford Holding, LLC, owner, Forest Properties, applicant

Property: Lang Road, Robert Avenue, Anne Avenue

Assessor Plan 287, Lots 1 and 1-A & Plan 286, Lots 3 and 24

Zoning District: Garden Apartment/Mobile Home Park

Description: Install six free-standing signs on related lots.

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 10.1241 and Section 10.1251.20 to allow the following freestanding signs in a district where free-standing signs are not allowed:
 - a) an 8'± x 1.9'± post-mounted sign
 - b) a 3.5'± x 3'± post-mounted sign
 - c) a 3'± x 3'± post-mounted sign
 - d) a 4.3'± x 1'± boulder-mounted sign
 - e) a 5.75'± x 1.6'± boulder-mounted sign
 - f) a 6.1'± x 1.3'± boulder-mounted sign
2. A Variance from Section 10.1243 to allow more than one freestanding sign on a lot.

SPEAKING TO THE PETITION

The maintenance manager Mr. Jesse Philbrick on behalf of the applicant stated that they wanted to split the property into two to make it more manageable, and they needed two names instead of one. He said all the areas already had signs and they simply wanted to put a more visually pleasing sign in place of the existing sign and also put new names on the properties.

Vice-Chair Rheume asked whether the two separate properties were owned by the same owner. Ms. Philbrick agreed, noting that the property was always known as Beechstone Properties but they were trying to get away from that name and rebrand the property. He said they perceived some negative value to the current property names.

Vice-Chair Rheume discussed the various locations of the signs coming into the property and asked whether the traffic would be sent toward The Pines leasing office. He said one sign indicated left but was pointing to the right. Mr. Philbrick said the sign would point to the left and not the right, and he further discussed it. He explained all the apartment buildings that belonged to the applicant and stated that what was once Stonecroft and Colonial Pines would be The Pines. He stated that the area was all multi-family housing even though some of them looked like single-family homes.

Vice-Chair Rheume noted a sign on Robert Avenue where it intersected on Lafayette Road and asked whether that was an easement. Mr. Philbrick said there was no one in that area and they didn't propose to

change it. He said they had no option to put a sign there and no proposal to do anything at that time. He said the sign on Lang Road was for the future Arbor View.

**SPEAKING IN FAVOR OF THE PETITION OR
SPEAKING IN OPPOSITION TO THE PETITION**

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

DECISION OF THE BOARD

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

Mr. Parrott stated that the petition was straightforward. The new signs were all really replacement signs in terms of location, and they were close in size as well as different materials and would look updated. He said the visual impact on anyone would be little to none.

Mr. Parrott stated that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because the signs would be identified by new names that people would have to learn, and the public interest would be served by directing people who were visiting or new to the area to find their particular address. Substantial justice would be done because it was a balancing test, and there was no reason to think a public interest would outweigh the benefit to the owners to get better signage that more clearly identified the new names or locations of the residences. He said that granting the variance would not diminish the value of surrounding properties because the area was surrounded by woods and would have no effect on surrounding properties. As for the hardship, there were special conditions of a big apartment complex that was set off by itself in its own little neighborhood, and there was no sense in comparing it to other properties in the area. It was surrounded by commercial Lafayette Road and woods and commercial across the street, so he felt it met the criteria.

Vice-Chair Rheume said he concurred with Mr. Parrott and added that the replacement of existing signs would be somewhat larger but overall reasonable in size, adding context to a complicated layout on the various properties, which was important to provide to people entering the property.

*The motion **passed** by a vote of 7-0.*

7) This petition was considered earlier in the meeting.

V. OTHER BUSINESS

Chairman Witham announced that the June meeting would be his last, due to a career change and wanting to spend more time with his family. He said it was a hard decision and that he would really miss it but felt that it was time to step down.

VI. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 9:00 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary

Minutes Approved 5-17-16.