

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

**7:00 P.M.**

**MAY 24, 2016  
RECONVENED FROM  
MAY 17, 2016**

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

**MEMBERS EXCUSED:** Jeremiah Johnson

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

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Mayor Jack Blalock thanked Chairman Witham for his long service and outstanding work on behalf of the City of Portsmouth and the City Council and presented him with a Mayor's Award. Juliet Walker of the Planning Department also thanked him on behalf of the Planning Department staff and the City staff and presented him with a mug.

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**V. NEW BUSINESS**

- 1) Case #5-1  
Petitioners: Benjamin M. & Amanda J. Goss  
Property: 6 Pine Street  
Assessor Plan 159, Lot 47  
Zoning District: General Residence A  
Description: Extend previously granted variance.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.521 to allow a 3'± right side yard setback where 10' is required.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Mulligan stated that he didn't recall who made the motion at the February meeting, but he knew it was unanimous.

### **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the extension for the previously-granted variance for the reasons that were articulated at the February meeting. Mr. Parrott seconded the motion.*

Mr. Mulligan stated that the amount of additional relief requested was small and there was a good reason for it that had been articulated. He said that all of the variance criteria and the justification for meeting it that existed in February still existed for the very modest increase, and he thought it should be approved.

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

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

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2) Case #5-2

Petitioners: Jesse T. Lore & Melissa Jones

Property: 4 McDonough Street #1

Assessor Plan 138, Lot 25-1

Zoning District: General Residence C

Description: Add rear shed dormer.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.521 to allow a 17'± rear yard setback where 20' is required.
  3. A Variance from Section 10.521 to allow a 0'± secondary front yard setback where 5' is required.

Vice-Chair Rheume recused himself from the petition.

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

Charles White on behalf of the owners stated that it was a modest addition. He reviewed the drawings and explained in detail how the criteria were met.

Mr. Mulligan asked how many square feet of living area would be impacted by the dormer. Mr. White said it would be 411 square feet. In response to further questions from Mr. Mulligan, Mr. White stated that it was a condominium, that the nearest impacted part of the building was owned by someone else, and that he would build the addition within the existing footprint.

The project contractor Patrick Driscoll stated that there was no further encroachment into the setbacks and that the dormers were consistent with the neighboring homes.

**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 moved to **grant** the variance for the petition as presented and advertised, and Mr. LeMay seconded the motion.*

Mr. Mulligan said that what the applicant was proposing was modest in size and scope, and the dormer would be added on top of the existing condominium unit within the existing nonconforming footprint. He said the variance was necessary due to the existing footprint that would violate the setbacks.

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 not be altered in any significant way, nor would such a modest change threaten the health, safety and welfare of the public. He said it would not encourage overcrowding or the diminishment of light and air and access and would result in substantial justice because the loss to the applicant if he was not allowed to make a modest expansion was not outweighed by the public by holding the line on the setbacks. Granting the variance would not diminish the value of surrounding properties because he was convinced that it would be tastefully designed and constructed, and the value of surrounding properties would be enhanced. As for the unnecessary hardship, Mr. Mulligan said the lot had special conditions because it was an irregularly-shaped corner one and the dwelling was already nonconforming as to the setbacks. The applicant wanted to simply expand upwards slightly to maintain the same conformity, so there would be no fair and substantial relationship between the purpose of the setbacks and their application to the property.

Mr. LeMay said he concurred with Mr. Mulligan, noting that it was a pre-existing nonconforming issue. The most egregious pieces of the encroachment would not change, and the addition was minor.

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

3) Case #5-3

Petitioner: Jeffrey N. & Elizabeth H. Dyer

Property: 346 Union Street

Assessor Plan 134, Lot 57-1

Zoning District: General Residence A

Description: Extend right side deck with stairs and add 3½'± x 12'± shed

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.

2. A Variance from Section 10.521 to allow a 4.5'± right side yard setback for an accessory structure where 10' is required.
3. A Variance from Section 10.521 to allow 43.03%± building coverage where 25% is the maximum allowed.

Vice-Chair Rheume resumed his voting seat.

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

The owner Jeff Dyer said he wanted to erect a storage shed, which would necessitate moving the deck. He noted that the large privacy fence would shield it. He went through the criteria.

Vice-Chair Rheume noted that Mr. Dyer's building was part of a duplex and asked whether the other owners used the deck and if Mr. Dyer had talked to them about the project. Mr. Dyer said the other owners did not use the deck and that they were in favor of the project. In response to further questions from Vice-Chair Rheume, Mr. Dyer said the dimensions were based off the current fence line and that he had not discussed the project with the owners of 336 Union Street.

Mr. LeMay asked whether there was a fence or railings to keep the children in, and Mr. Dyer said he built a planter and would add a bench on the extension.

Mr. Lee asked whether there would still be access to the rear of the house once the shed was built. Mr. Dyer agreed, saying that the back door was on the deck.

Mr. Mulligan asked Mr. Dyer what motivated him to move the deck out. Mr. Dyer said it was partly because the existing space wasn't useful to him, and if he put the shed any closer to the house, he'd have to cover up a window.

### **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 moved to **grant** the variance for the petition as presented and advertised, and Mr. Parrott seconded the motion.*

Vice-Chair Rheume briefly discussed the reason the 18 inches should be included in the calculations and said he thought that what was presented was reasonable and the amount of relief was acceptable. He stated that granting the variance would not be contrary to the public interest because what was being added was a relatively modest shed-type addition that the public would not see, much less have interference with, and the general streetscape would be unaffected. Granting the variance would observe the spirit of the Ordinance because the 2-ft right yard setback, where five feet was required, was a little more than half of what was required. Considering that the deck was barely at 18 inches, he thought it was reasonable. He said that the accessory structure was 4.5 feet where 10 feet was required, considering the tight dimensions and

in comparison to the other homes, it was a suitable distance. He said the added height would be very low and would not add to the light and air concerns of the neighbors. He said the overall building coverage of 43% appeared high, but the current building coverage was 41.26%, so what was asked for was a modest increase in the amount of current building coverage on the lot, and some of the building coverage was represented by a 18” high deck. He stated that granting the variance would do substantial justice because the applicant would make full use of the deck and needed storage space, and it would not be outweighed by any public concerns for light and air or general appearance and characteristics of the neighborhood. Granting the variance would not diminish the values of surrounding properties because what would be added on was relatively small and would not change the fundamental size of the structure. It would add minimal value to the house and would not detract any value from the home or surrounding homes. As for unnecessary hardship, Vice-Chair Rheaume said that the home was on a deep but not incredibly wide lot, and the applicant wanted to reduce the amount of room on the more open side of the house, so he believed that there were special conditions with the nature of the placement of the building on the house and the overall dimensions of the house and that the applicant was asking for a reasonable addition of a small shed on a one-story level.

Mr. Parrott said he concurred with Vice-Chair Rheaume. He said the additions being asked for were modest and in keeping with the rest of the property, and the house was fairly large on a small lot. He said the shed and deck extension additions were proportionate to the size of the house and were logical to make the house more usable for the owner.

Chairman Witham stated that he supported it, although he was hesitant at first because of the shed, but then he realized it was a shared backyard.

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

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- 4) Case #5-4  
Petitioners: Five Hundred Five Lafayette Road LLC  
Property: 605 Lafayette Road  
Assessor Plan 229, Lot 9  
Zoning District: Gateway  
Description: Replace one-story office building with two-story office/retail  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed, or changed except in conformity with the Ordinance.
  2. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located between a principal building and a street.
  3. A Variance from Section 10.1124.10 to allow a loading area to be located between a front property line and a building or structure.

Mr. Mulligan recused himself from the petition.

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

Attorney John Bosen on behalf of the applicant explained what the proposed building would look like. He stated that they did not need all the relief that they originally thought they would because they didn't need as many parking spaces or as much relief for the loading zone. Attorney Bosen reviewed the criteria and said they were met.

Vice-Chair Rheume asked whether the parking spots designated on the north side of the building would be accessed by the neighboring property and whether Attorney Bosen was confident that the easements were in place, and Attorney Bosen agreed.

Chairman Witham asked about signage for the four separate businesses and was told that there would not be any.

### **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 moved to **grant** the variances for the petition, and Mr. Moretti seconded the motion.*

Mr. LeMay stated that the relief requested was fairly small. He stated that granting the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed because it was clear that it would not impact the essential characteristics of the neighborhood and would probably fit in fairly well. Substantial justice would be done, and the benefit to the applicant would not be outweighed by any harm to the general public. Mr. LeMay said the spirit of the Ordinance that was being varied had to do with parking in the front yard, which was almost a technical detail where one space happened to be behind the line. The distance between the building and the road would be free of vehicles, so it would actually conform to the spirit. Denying it would not be just to the individual. Mr. LeMay said that granting the variance would not diminish the value of surrounding properties because of the compatible use with surrounding retail uses. As far as resulting in unnecessary hardship, he said the lot was irregularly shaped, had restrictions on it, and also had a pre-existing nonconforming use on it, so he thought the applicant packed it in the best he could. He said the relief requested was so small that the hardship was balanced.

Mr. Moretti said he concurred with Mr. LeMay, adding that he inspected the property the day before and believed that there was a number of parking spots that did not conform with the front setback, so he thought it was an improvement to that and a minimal request.

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

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- 5) Case #5-5  
Petitioners: 319 Vaughan Street Center LLC  
Property: 319 Vaughan Street  
Assessor Plan 124, Lot #9

Zoning District: CD5 and Downtown Overlay District

Description: Summer outdoor concert series.

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 #3.521 to allow a series of outdoor concerts in a district where the use is only allowed by Special Exception.

Mr. Mulligan resumed his voting seat.

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

Karil Reibold, the Interim Executive Director at 3S Arts Space, stated that the concerts would be held in the courtyard and would not alter anything. She reviewed how the criteria would be met.

Vice-Chair Rheume asked Ms. Ferrini whether the property was of concern because of it being 325 feet from a CD4L1 District, noting the four residential properties that lined North Mill Pond. Ms. Ferrini said they were the residential properties across the cemetery.

In answer to Mr. Mulligan's questions, Ms. Reibold stated that there would be 6-8 concerts with an average attendance of 50-75 people, and that people could park at the adjacent City lot.

Chairman Witham noted that the application form indicated five specific dates ranging from the beginning of July through August 26. Ms. Reibold said that was all they were thinking of doing.

In answer to Mr. Parrott's questions, Ms. Reibold said there would be no seating arrangements or temporary chairs, and that people would stand or sit on the ground. She said the designated area would hold about 90 people comfortably, and in case of inclement weather, the concert would be postponed instead of putting up a tent.

### **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. Parrott moved to **grant** the special exception and variance for the petition as presented, and Mr. Mulligan seconded the motion.*

Mr. Parrott stated that it was a special exception and that standards were provided as such that the events could go on by special exception. He said there would be no hazard to the public or adjacent properties because, due to the nature of the proposed, it seemed unlikely that any of those things would occur. Mr. Parrott stated that granting the special exception would pose no detriment to the property values in the vicinity or changes to the essential characteristics of the area, considering that it was for a limited duration and a small number of events. It was a temporary situation and would be on a trial basis. He said that access, odors, smoke, gas, and

other pollutants did not apply due to the nature of the proposal. There would be no creation of a traffic safety hazard or increase in the level of traffic or hazards because people would park on the street, in the adjacent lot, or the parking garage. The concerts were unlikely to cause problems because they would take place between six and eight o'clock P.M. Granting the special exception would place no excessive demand on municipal services because the concerts would take place on a temporary basis. The increase in storm water runoff criteria did not apply.

Mr. Parrott said that much of what applied to the special exception also applied to the variance. He stated that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance, both of which were unlikely to be affected negatively due to the limited duration and limited number of instances in a setting that wasn't close to many residences. He said the nature of the noise would probably be pleasant and not adversely affect the public interest. The value of surrounding properties would not be diminished because the concerts would be on a very limited basis, with no effect to surrounding properties. As for unnecessary hardship, Mr. Parrott said that the applicant would be doing something that was allowed by special exception on a limited basis, and they had no other place to do it, so they qualified for special conditions. The space was limited, and it was a well thought-out plan, and no temporary structures would be put up, nor would the appearance of anything be changed.

Mr. Mulligan stated that the only criteria in regard to special exception was whether or not the proposal would create a traffic safety or congestion issue, and he said it was already a performing arts venue with similar activities that went on indoors all the time, with almost no restriction of the property, so he felt it would clearly meet the standards of special exception.

Mr. Mulligan said that, as far as the variance, he agreed with Mr. Parrott that much of the same justification applied and felt that what was proposed was a very limited number of relatively short performances in a small space that would naturally self-limit itself to the type of performances that could be put on and the number of people that could attend. He said the amount of performances was so limited that they would meet the spirit and intent of the Ordinance and would not be contrary to the public interest. The essential characteristics of the neighborhood would not change, whether five concerts were indoors or outdoors, and the hours would only be between six and eight o'clock. Substantial justice would be done because the gain to the public if it became a popular event could lead to less use of Prescott Park, which people in the south end would be happy to see. Granting the variance would not diminish the values of surrounding properties because the physical structure was already in place and the amount of non-conforming use would be minimal, so there would be no negative effect on the commercial operations within that neighborhood. As for special conditions, he said it was a unique property with special characteristics that would support granting a variance.

Vice-Chair Rheume said he would support it, explaining that his concern for the North Mill Pond residents was alleviated by the geographic high point that would help reduce any noise from the venue toward the residential district.

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

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6) Case #5-6

Minutes Approved 6-21-16.



Petitioners: 334 Parrott Avenue, LLC  
Property: 334 Parrott Avenue  
Assessor Plan 129, Lot 37  
Zoning District: General Residence A  
Description: Construct attached garage and addition with second dwelling unit.  
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 6326.5± s.f. where 7,500 s.f. is required.

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

Attorney Peter Loughlin on behalf of the applicant was present to speak to the petition and introduced the abutter Rick Bean and the architect. He also said he had two letters of support. He reviewed the petition and referenced submitted photos that indicated how much backyard the place had. Attorney Loughlin explained how the proposal met the criteria.

Mr. Mulligan noted that there were three homes in a row, with consistent backyards abutting one another, and said he knew it was a family compound situation but said it may not always be the case. He said the backyards would be cut off from one another and a fairly intense use would be introduced if the proposal was approved. Attorney Loughlin said he agreed that the building footprint would be increased in the rear of the property but said it could be a much larger building footprint if the Ordinance permitted it. He said that, in terms of impact on the neighborhood, it would not impact the views of the nearby residents. They further discussed it.

Rick Bean of 324 Parrott Avenue gave the history of the property and said there was no intention to transfer any of the properties to anyone that wasn't family, noting it was a legacy issue.

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

Walter Hale of 165 Richards Avenue said that the three yards in sequence went from his yard to the baseball field. He said the backyards would change into a two-story house and would block his view, and would also cause his property values to decrease and possibly set a precedent.

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

Attorney Loughlin noted that Mr. Hale's home was the second home from the corner of Parrott Avenue, but the addition on the back of 334 Parrott Avenue extended out and did not affect most of his view of the baseball field. He also referred to the evergreen trees outside of 224 and 334 Parrott Avenue and said the effect on Mr. Hale's view was minimal.

### **DECISION OF THE BOARD**

Chairman Witham said there would be some diminution of property value due to lost views but agreed with Attorney Loughlin that the variance request had to result in a diminution of value. He said it was a use variance, not a setback or rear yard setback, so the volume part of the structure that would possibly be diminished in value was allowable. He also noted that there

were many two- and three-family homes in terms of lot area per dwelling unit, most of which were under 1500 square feet, so he did not see a change to the neighborhood characteristics.

*Vice-Chair Rheume moved to **grant** the variance for the petition as presented and advertised, and Mr. LeMay seconded the motion.*

Vice-Chair Rheume said that Chairman Witham touched on the points he was going to make. He said that he empathized with the abutter, but by right the owner of the property could make a larger addition that would cause more loss of sight lines. He said the applicant made a good argument that the general character of the neighborhood was that every multi-family home and a number of single-family homes did not meet the 7500 s.f. dwelling unit requirement. He said the applicant was asking for a small amount of relief and felt that the request was reasonable.

Vice-Chair Rheume stated that granting the variance would not be contrary to the public interest because the applicant made a convincing case that the general characteristics of the neighborhood were some single-family and multi-family units that existed on relatively small lots compared to the total number of square footage required per dwelling unit. Granting the variance would do substantial justice because the balance test was looking at whether the owner's rights to make full use of his property and get the second dwelling unit as future housing for his family was outweighed by any public interest with loss of sight lines. He said there wasn't enough there. It would not diminish the value of surrounding properties because the loss of sight lines was a potential concern but relative to the second dwelling unit addition did not diminish the surrounding property values because there was not enough room for the property, so property values would not be negatively affected and would probably be positively affected. Vice-Chair Rheume said the property had a unique character because it was large for the neighborhood that was a mixture of multi-family and single-family units, and the overall character indicated that the large property size had hardship, so he felt it was logical to allow a second dwelling unit. He said there were no public purposes of the Ordinance that could be outweighed and the request was a reasonable one.

Mr. LeMay said he concurred with most of what Vice-Chair Rheume said, except that he felt the notion that, because someone could build something else, where the Board was giving a variance to construct a second dwelling unit, was a little weak. He said if the Board were to deny the petition, there would not be the incentive to build it, which he thought played a part, but he felt there was plenty of justification otherwise, so he seconded the motion.

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

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- 7) Case #5-7  
Petitioner: KLDay Realty LLC  
Property: 2 Greenleaf Woods Drive, Ste 102  
Assessor Plan 243, Lot 6-E102  
Zoning District: Gateway  
Description: Religious services in a building with office uses.  
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 #3.11 to allow a religious place of assembly in a district where the use is only allowed by Special Exception.

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

Gene Fisk of Fisk and Associates stated that he was the property manager representing the owners of Unit 102, and he also introduced Pastor Barnes. He said they wanted a special exception to allow the church to use the business office. He noted that he had a letter of approval from the condominium board of directors. Mr. Fisk said they would only use a fraction of the 100 parking spaces in front of the building and that 99% of the offices would be empty when there were church services on Sundays and Wednesday evenings. He reviewed the special exception criteria and said they would be met.

Vice-Chair Rheume asked how many members were in the congregation. Pastor Barnes said there were 30-40 on a Sunday and 20-30 on Sunday and Wednesday evenings. Pastor Barnes said they would look for another place if the congregation grew.

Mr. Mulligan asked whether services would be held in that space indicated on the floor plan, and Pastor Barnes agreed. In answer to further questions from Mr. Mulligan, Pastor Barnes said the property abutted Gosling Meadows and that he had not contacted the Portsmouth Housing Authority about the use.

### **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 moved to **grant** the special exception for the petition as presented and advertised, and Vice-Chair Rheume seconded.*

Mr. Mulligan stated that the proposal met all the criteria set forth for granting a special exception and noted that the churches in his neighborhood made excellent neighbors.

Mr. Mulligan said that the request of use was permitted by special exception and that it would not present any hazard to the public or adjacent properties on account of fire, explosion, and so on because it was for religious assembly use. There would be no detriment to property values or change in the essential characteristics of the neighborhood because the built structure and environment wouldn't change at all. He said the use was compatible with the existing commercial uses and that most of the business uses would be active when the church was dormant, and vice-versa. He said nothing about the use would present problems as far as access, odor, noise, dust, storage equipment and so on. Mr. Mulligan stated that there would be no creation of traffic safety hazards or increase that would occur as a result and that there would be plenty of parking for the facility, and there would be no excessive demands on municipal services, nor any effect on storm water runoff. He said the proposal met all the criteria.

Vice-Chair Rheume said he concurred with Mr. Mulligan and thought the only potential concern with the criteria was the traffic congestion and safety hazards, but he said the lower portion of the property always seemed to have plenty of available parking.

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

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**Chairman Witham stated that the Board would hear Case #5-9 out of order next.**

- 9) Case #5-9  
Petitioners: Cole BJ Portfolio II LLC & BJ's Wholesale Prop Tax DPT C2  
Property: 1811 (1801) Woodbury Avenue  
Assessor Plan 215, Lot 14  
Zoning District: General Business  
Description: Install second free-standing sign.  
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 10.1240 to allow a second free-standing sign on a lot.

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

John Sokul of Hinckley Allen was present to speak to the petition and introduced Rosalyn Holderfield of I.D. Associates, BJ's Wholesale Club's national sign consultant. Mr. Sokul reviewed the history of the signs and said there were two distinct uses to the property, the gas station and the retail store. He noted that the nonconformity of the sign was that only one pylon sign was allowed, so they needed the variance.

Ms. Holderfield reviewed the tax and the aerial photos and stated that they planned to reconfigure the existing sign so that the gas pricing was brought up to date with modern technology. She also showed photos of the existing and proposed signs.

Vice-Chair Rheume stated that what was proposed was beneficial overall by decreasing the size of the main portion of the sign and increasing the price information, but his concern was the lower panel that indicated the BJ's perks and the Mastercard price. He asked what the point was between that and the regular member price of unleaded gas. Ms. Holderfield said it was the new strategy to advertise a rewards-type of card for a lower price than the member price. Vice-Chair Rheume said that the panel could potentially be visual clutter and a distraction to passersby by having to read a length statement of perks. Ms. Holderfield said the letters would be 5-1/2" tall and legible to read from the intersection.

Mr. Sokul then reviewed how the criteria would be met. Mr. Moretti asked whether the square footage would change. Mr. Sokul said it would increase five feet but would still be under the aggregate sign area allowed at the site as a whole. Mr. Moretti asked what the hours for operating the sign lighting would be, and Ms. Holderfield said the lighting would turn off when BJ's closed.

Mr. LeMay said the size of the sign would increase due to the content, and he asked what the relationship was between the member's price and the reward card price and whether it was set. Mr. Lee said he was a BJ's perks member and knew there would be a 10-cent-a-gallon discount. Mr. LeMay questioned whether or not the second panel would tell people anything, in that case, reasoning that it wouldn't be useful information to someone who used premium gas. Ms. Holderfield said the advertisement of the perks would draw potential new customers. Mr. LeMay concluded that it was simply advertising and was not useful information.

### **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 moved to **grant** the variance for the petition, and Mr. Lee seconded.*

Mr. Moretti said granting the variance would not be contrary to the public interest because it was an existing sign on an existing site. There was a slight change in square footage, but the sign would be doing what it had done before, which was to advertise the price of gas for the public. He said the sign would be improved, less electricity would be used, and the sign would probably be more visible to the passing motorist. He stated that the spirit of the Ordinance would be observed because, even though the Ordinance had changed since the sign was installed 18 years before, causing the applicant to go before the Board, it was the same existing sign. Mr. Moretti stated that granting the variance would do substantial justice because it was the same sign, owner, application of use, and location. There was little change and it was allowed by the Ordinance as well as by the change of design for the use. He stated that the value of surrounding properties would not be diminished because the sign already existed, there was no public interest, and everything around it was commercial. As for literal enforcement, the sign would still be there but the electricity inefficiency would not, and the improvement of the sign was a great improvement for the property as well. The special conditions were that BJ's was one large business with two different operations, both of which needed to have distinguishing signs to advertise what they did and how they operated. The sign displayed to the public the price of the gas and whether people would purchase from BJ's or other businesses in the vicinity.

Mr. Lee said he concurred with Mr. Moretti and said the new sign would be a welcome addition.

Vice-Chair Rheume stated that he would not support the motion because he had a concern about what purpose the second portion of the sign would serve. He thought the additional sign had nothing to do with selling gas and more to do with selling a credit card. The point was to entice people to sign up for the credit card and not the gas. He said the sign only showed that a person could get a lower price if they used the Mastercard. He said there was a lot of visual clutter and distraction for no generic benefit to the gas consumer, but more of a benefit to BJ's, and he thought it was inappropriate.

Chairman Witham said he would support the motion because he felt that the street frontage was expansive enough to support a sign.

*The motion passed by a vote of 5-2, with Vice-Chair Rheaume and Mr. LeMay voting against the motion.*

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**The Board then heard Petition # 5-8.**

- 8) Case #5-8  
Petitioners: CSS Realty Trust, Christopher D. McInnis, Trustee, owner, White Acquisitions LLC, applicant  
Property: 200 McDonough Street  
Assessor Plan 144, Lot 29  
Zoning District: General Residence C  
Description: Single family home on pre-existing nonconforming 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 10.321 to allow a nonconforming building or structure to be extended, reconstructed or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.516.30 to allow a structure obstructing visibility to be erected on a corner lot between the heights of 2.5' and 10' above the edge of pavement grades within the area outlined in the Ordinance.
  3. Variances from Section 10.521 to allow the following:
    - a) A secondary front yard setback of 1.2'± where 5' is required;
    - b) A 1.8' left side yard setback where 10'± is required; and
    - c) 44.4%± building coverage where 35% is the maximum allowed.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney John Bosen was present to speak to the petition on behalf of the applicant. He introduced Shannon White and the architect **Ted Meadows**. Attorney Bosen reviewed the petition and noted that the relief was minimal. He explained how the criteria would be met.

Vice-Chair Rheaume asked about Plan C-1, the general layout, and the discussion about the neighboring property being the 10-ft passageway. Attorney Bosen said there was a passageway behind the property that would not be affected. Vice-Chair Rheaume asked whether it applied to both properties that the 10-ft open space had to be maintained, and Attorney Bosen said he went back several deeds but hadn't seen it. Vice-Chair Rheaume said it appeared to be on the neighboring property and the requirement had been identified.

Mr. McDonell said it looked like there were two front elevations, and he asked about the garage. **Mr. Meadows** said the original concept showed that the garage was on Salem Street but that it was changed to McDonough Street. Chairman Witham noted that the gable face projected out a bit further on the colored drawing. **Mr. Meadows** said it was the roofline fascia.

Mr. LeMay said he thought it was very aggressive in terms of height and width, and he asked what drove it to be 46 feet. Attorney Bosen said it was the two parking spaces.

Terry Brandon of 209 McDonough Street stated that he lived across the street and was in favor of the project because it would improve the property and add to surrounding property values as well as add appeal to the neighborhood.

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

Chairman Witham noted that a letter of opposition was received from Elizabeth Bratter of 159 McDonough Street.

James Beal of 286 Cabot Street said he was a secondary abutter and felt that the project was aggressive for the lot. He pointed out that the Board had always required the current setbacks for any new construction. He said it would be an improvement to have a new dwelling on the property, but the traffic obstruction was an issue as well as the height and the neighborhood encroachment. He said he questioned the percentage of the proposed overall coverage and the idea that it would not diminish property values.

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

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

### **DECISION OF THE BOARD**

Chairman Witham opened it up for discussion. Mr. Parrott said, considering it was a teardown and replacement, that it was an opportunity to design and build a structure that was much closer to the setback and lot coverage requirements. He said the requirements were minimal in General Residence C, which was one of the tightest zones in the City in terms of minimal setback requirements, and the project was not even close to them on the secondary front and the left side. Chairman Witham said he supported a new home on the lot but struggled with the scale. Mr. LeMay agreed, noting that 46 feet was substantial. Vice-Chair Rheume said there were a few things going for the applicant, such as the setback and the reference to the 10-foot gap between the property and the adjacent property. He noted that his only problem with the application was the height, saying that other tall properties around it had partial third stories instead of full ones, and he felt that a full third floor gave a feel of being a much bigger property.

Chairman Witham said he agreed with the comments on the setbacks but felt that the project would change the essential characteristics of the neighborhood, which had a certain scale. He said the project blew it out of the water due to the vertical expansion. It was further discussed.

*Vice-Chair Rheume moved to **deny** the application as presented, and Mr. Parrott seconded the motion.*

Vice-Chair Rheume stated that there were some good things proposed but, relative to the neighborhood, the project went a little too far in height and scale and particularly failed on Criteria #1, which was the public interest. He said the scale had been established as a two-story neighborhood, and the applicant was going for too tall of a structure and would fall out of the general characteristics of the neighborhood as well as be overwhelming to some of the

properties. He said the setbacks might also be overwhelming to some of the houses. Vice-Chair Rheume stated that the spirit of the Ordinance was affected as well and, even though there was some justification for the setbacks, the overall scale asked for was just too much.

Mr. Parrott said he concurred with Vice-Chair Rheume and said his concern with also with Criteria #1 and #2, which would be represented by a mature neighborhood with a consistent look. He said it was pressing the envelope a little too far because the Ordinance established the setbacks and lot coverage for esthetic and practical reasons, and he felt that the project was pushing both of those aspects beyond reason. Mr. Parrott also said that, considering the proposal was to tear down and replace, he felt it was a full opportunity to get a lot closer to the compliance with the Ordinance as it was written. He felt that some redesign could present a much more favorable impression for the Board.

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

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## **VI. OTHER BUSINESS**

Chairman Witham told the Board members that it had been an honor to work with all of them and that they were one of the strongest Boards he had ever been a part of, and that he would miss them. He said it was a good time to leave because the City was in good hands.

Vice-Chair Rheume told Chairman Witham that he would miss his leadership and had learned a lot from him. He said he had big shoes to fill and hoped he would do a small portion of what Chairman Witham had done. Mr. Parrott noted that he was now the senior Board member and said it had been a pleasure to serve with Chairman Witham because of his expertise, fair-mindedness and even-handedness. He said the Board could benefit from it going forward.

Chairman Witham thanked everyone.

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## **VII. ADJOURNMENT**

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 9:45 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary