

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

**7:00 P.M.**

**AUGUST 16, 2016**

**MEMBERS PRESENT:** Chairman David Rheume, Vice-Chairman Charles LeMay, Arthur Parrott, Patrick Moretti, Jeremiah Johnson, Peter McDonell, John Formella

**MEMBERS EXCUSED:** Christopher Mulligan, James Lee

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

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Chairman Rheume stated that Case 7-4, 17 Gardner Street, was withdrawn and that Case 8-8, 127 and 137 High Street, had a request to postpone.

**I. APPROVAL OF MINUTES**

A) July 19, 2016

*It was moved, seconded and **passed** unanimously (7-0) to approve the July 19, 2016 minutes with minor edits.*

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Chairman Rheume asked for a motion to take Case 8-8, the petition for 127-137 High Street, out of order so that it could be postponed. *It was moved, seconded, and **passed** unanimously (7-0) to take Case 8-8 out of order.*

Chairman Rheume then read the petition into the record and asked for a motion. *It was moved, seconded, and **passed** unanimously (7-0) to postpone the petition to the September meeting.*

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**II. OLD BUSINESS**

A) Request for Rehearing regarding 2219 Lafayette Road.

**DISCUSSION:**

The Board discussed the original appeal and the request for rehearing in great length.

Mr. Parrott summarized that he concurred with everything the Board discussed and noted that it reminded him of how thorough the hearing was. He stated that he didn't find any evidence that the Board misunderstood or made errors regarding the application. He said they did a fair job and felt that the applicant had a thorough hearing. He said the Board made the correct decision.

**DECISION OF THE BOARD**

*Mr. Moretti moved to **deny** the Request for Rehearing, and Vice-Chair LeMay seconded.*

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

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**III. OLD BUSINESS - PUBLIC HEARINGS**

4) Case #7-4

Petitioners: Thunderbolt Realty Trust of 2011 c/o Alison Jewett

Property: 17 Gardner Street

Assessor Plan 103, Lot 14

Zoning District: General Residence B

Description: Reconstruct rear additions.

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

1. Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A front yard setback of 4'10" ± where 5' is required;
  - b) A left side yard setback of 1" ± where 10' is required;
  - c) A rear yard setback of 9'2" ± where 25' is required; and
  - d) Building coverage of 40.2%± where 30% is the maximum allowed.

**ACKNOWLEDGEMENT OF WITHDRAWAL WITHOUT PREJUDICE.**

Chairman Rheume read the petition into the record and stated that it was withdrawn by the applicant.

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**IV. PUBLIC HEARINGS – NEW BUSINESS**

1) Case #8-1

Petitioners: Liva-Blaisdell Family Revocable Trust of 2016, Liva F. J. & Blaisdell  
B.L., Co-Trustees

Property: 71 Baycliff Road

Assessor Plan 207, Lot 46

Zoning District: Single Residence B

Description: Replace and expand front deck and stairs.

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, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 27.79'± front yard setback where 30' is required and a 7.84'± right side yard setback where 10' is required.

**SPEAKING IN FAVOR OF THE PETITION**

Alex Ross of Ross Engineering was present on behalf of the owners. He reviewed the petition and stated that there was no change in the footprint or the outward expansion. He reviewed the site plan and noted that a wetlands permit was required. He discussed all the site improvements. He said the three direct abutters were in support of the project. Mr. Ross distributed additional photos of the project and briefly addressed them. He then reviewed the five criteria and said they were all met by the project.

Mr. Ross introduced the owners Frank and Bonnie Liva. Mr. Liva said they wanted to improve the home and ensure that it fit into the neighborhood.

Mr. Moretti noted that the driveway looked like it was in the common way. Mr. Ross said it was a narrow City easement to the water and referred to the tax map. In answer to further questions from Mr. Moretti, Mr. Liva stated that only a few neighbors used the access and that the City had not used it for anything.

Chairman Rheume asked whether the existing foundation would be re-used for the entire expansion, and Mr. Ross stated it would.

Steve Gray of 82 Driftwood said he was the abutter on the east side and was very pleased with the proposal and felt that the City would be well served by the project.

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

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

**DECISION OF THE BOARD**

*Vice-Chair LeMay moved to **grant** the variances for the application as presented and advertised, and Mr. Johnson seconded.*

Vice-Chair LeMay stated that the relief requested was quite small and would be unreasonable to deny. He said granting the variances would not be contrary to the public interest, and the spirit of the Ordinance would be observed. It would not alter the essential character of the neighborhood because there were similar residential homes in the area, and it would not threaten the public's health, safety and welfare. Granting the variances would do substantial justice because the benefit to the applicant was important and there was no general public interest in strictly maintaining the setback requirements. He said that, even though it encroached slightly on the public way, it would be no worse than it currently was and it wouldn't intimidate anyone from walking to the water. He said granting the variances would not diminish the value of surrounding properties and thought it might enhance them. As far as literal enforcement resulting in unnecessary hardship, Vice-Chair LeMay said that if the setbacks were enforced, it would make for an awkward property, and there was no public interest in stopping the project. He said that what was unique about the property was the siting of the building on the lot.

Mr. Johnson stated that typically, his concern with going higher on the setback encroachment was the effect on the neighbors, but the two closest abutters were on the other end of the property, so he didn't think it would have an effect.

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

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- 2) Case #8-2  
Petitioners: Frederic & Priscilla Roue  
Property: 14 Harding Road  
Assessor Plan 247, Lot 10  
Zoning District: Single Residence B  
Description: Replace rear deck.  
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 21.33%± building coverage where 20% is the maximum allowed.

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

The owner Frederic Roue was present to speak to the petition and stated that he wanted to demolish the existing deck because it was old and dangerous and replace it with a new one. He said the deck would not encroach on other properties and was similar to the neighbor's deck. He briefly reviewed some of the criteria.

Mr. Moretti asked how big the current deck was. Mr. Roue said he didn't have the exact size but knew that it was slightly above the 20% mark. He said the new deck would be

18'x18' but a different shape. Mr. Johnson asked why Mr. Roue chose the 18'x18' size. Mr. Roue said it was based on the measurements he took and was a good size for what they wanted.

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

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

**DECISION OF THE BOARD**

*Mr. Moretti moved to **grant** the variance for the application as presented and advertised, and Mr. Parrott seconded.*

Mr. Moretti stated that granting the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed because the applicant had a current deck that looked relatively close to the new deck. Overall, the coverage would be minimally impacted. Substantial justice would be done because the applicant would have a deck that was more code-compliant and could enjoy with no safety issues. The deck would add substance to the house. Granting the variance would not diminish the value of surrounding properties because the old deck would be demolished and the new deck would be an improvement to the house and add a much better look to the neighborhood due to its modern materials, as well as add value to surrounding properties. As far as the hardship, Mr. Moretti said the current deck was in poor condition and the applicant would get much more use out of the new deck, which would also be an improvement to the applicant's lifestyle and to the property.

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

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

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3) Case #8-3

Petitioners: Abigail Kell Sutcliffe, owner, Fred Kell, applicant

Property: 12 Woodbury Avenue

Assessor Plan 163, Lot 9

Zoning District: General Residence A

Description: Add rear porch.

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, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow 55.94%± building coverage where 25% is the maximum allowed.

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

The applicant was not present to speak to the petition.

### **DECISION OF THE BOARD**

Chairman Rheume asked for a motion to suspend the discussion and return to it at the end of the meeting if the applicant was present.

*Mr. Parrott moved to **postpone** the application to the end of the meeting, and Mr. Moretti seconded. The motion **passed** with all in favor, 7-0.*

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4) Case #8-4

Petitioner: Public Service Company of NH

Property: 280 & 300 Gosling Road

Assessor Plan 214, Lots 2 & 3

Zoning District: Waterfront Industrial & Office Research

Description: Lot line revision affecting setbacks and frontage.

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

Lot #1 (214/2)

1. A Variance from Section 10.531 to allow 134.95'± continuous street frontage where 200' is required.
2. A Variance from Section 10.573.20 to allow right side yard setbacks of 3'± for accessory structures.

Lot #2 (214/3)

3. A Variance from Section 10.573.20 to allow left side yard setbacks of 0'± to 50'± for accessory structures.

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

Ken Clinton of Meridian Land Services on behalf of the applicant was present to speak to the petition. He stated that he was seeking multiple variances and noted that he needed to separate the transmission-related improvements and infrastructure from the power facility. He said some of the improvements were intermixed on the two lots. Mr. Clinton reviewed two exhibits highlighting Lots 1 and 2. He noted minor improvements consisting of a light post, utility pole, chain link fence and guard rail.

Mr. Parrott asked whether anything would require physical change on the ground, and Mr. Clinton said they would not.

Chairman Rheume noted that the guard rail was indicated as Item #4 and the oil line was Item #3, but there was another pipeline labeled as Item #4. He asked what that pipeline was. Mr. Clinton said the numbers were transposed and that there were two transmission towers, a pipe line, and a vision line. He said Item #4 was the oil line.

Chairman Rheaume noted that there was a zero-foot setback on the left-hand lot, but that it crossed over on both lots. He asked whether or not it would be a zero-foot setback on the right-hand Lot 214/2. Mr. Clinton said he didn't suggest in the application that the setback relief would be on one side or the other. Chairman Rheaume said that it was advertised that Lot 214-/2 only needed a 3-ft right yard setback, but if the pipeline went across both properties, a zero foot setback on both sides would be needed,

Mr. Clinton then reviewed the five criteria and said they were met.

Mr. McDonnell asked whether the generator facility would retain some kind of access easement. Mr. Clinton replied that there was an access along the reduced frontage that was reserved and, in the future, if a buyer wanted an easement, it would be negotiated by the buyer and seller. At the time, he said Public Service would retain both lots, so there was no need for an easement, but it could happen.

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

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

### **DECISION OF THE BOARD**

Chairman Rheaume said he was concerned that, if the pipeline crossed on both properties, it should be reflected as a zero-foot setback on Map 214, Lot 2. He suggested a stipulation to recognize the zero-foot setback. He said the Planning Department could potentially allow the application to go through with the 3-ft setback but thought it would behoove the Board to tidy it up and make it a zero foot. The Board further discussed it.

*Mr. Parrott moved to **grant** the variances as presented and advertised, with the stipulation that on Variance #2, Lot 214/2, the 3-ft setback would be changed to zero feet.*

*Mr. Johnson seconded the motion.*

Mr. Parrott stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said it was a very unusual request in that nothing would change at all because it was simply a question of dividing up the property to support a potential sale, and the facility was well established and there was no request to change anything at that point. He said it was hard to see any public interest and noted that there was no public land involved nearby other than the river. He said the spirit of the Ordinance would be observed by helping the property owner make efficient use of the property. He said it was a technical change for legal reasons, so he felt it was within the spirit. He said granting the variances would do substantial justice because it was the tipping test as to whether public interest was involved, which he didn't see whatsoever, so the substantial justice went to the applicant. Mr. Parrott said granting the variances would not diminish the value of surrounding properties because there would be

no physical change. As far as the unnecessary hardship test, Mr. Parrott said the property had special conditions due to the size, the nature of work done there, and the existing special conditions due to the desire of the company to divest itself as part of the operation. He said the way to do that was to sell off part of it, and there had to be a boundary line so the two entities knew what they owned and controlled. He said it met the hardship test.

Mr. Johnson said he concurred with Mr. Parrott and felt that there was no public interest in the variances being requested. He knew the future use was intended for sale, but the property that was most affected by the setbacks was the adjacent one, which was also asking for its own setbacks.

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

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- 5) Case #8-5  
Petitioners: Carol I. Cooper, owner & Lorax Sustainable Development, LLC,  
applicant  
Property: 996 Maplewood Avenue  
Assessor Plan 219, Lot 4  
Zoning District: Single Residence B  
Description: Construct three free-standing dwellings.  
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 more than one free-standing dwelling on a lot.

Mr. Johnson and Mr. Formella recused themselves from the petition. Chairman Rheume noted that there were five sitting Board Members and stated that the application would require four out of five votes for approval.

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

Attorney Tim Phoenix on behalf of Lorax was present to speak to the petition. He introduced the principal Mike Brigham and the project engineer Corey Colwell.

Attorney Phoenix stated that a similar proposal was previously submitted for approval that had five condominium units, including two on the back area, but because of the comments from the Board and concerns from the neighbors, they removed the two back units from the proposal, reducing the density by 40%. Attorney Phoenix said the front house would be a standard Colonial centered on the lot, like many other homes in the area, with heavy landscaping along the front and sides. The two other homes would be New Englander-style homes and heavily buffered from the neighbors. He said the only variance required was for the multiple housing units on one very large lot. Attorney Phoenix emphasized that Mr. Brigham would require the condominium owners to



maintain and protect the pond, and he noted that the homes would be solar powered. He further discussed the proposal.

Chairman Rheaume said he appreciated the changes that were made and felt that the proposal was a bit closer to something that the Board could approve. He noted that previously, the buildings were oriented in a specific direction to maximize their environmental-friendly capabilities, and he asked whether there was a significant compromise to let that happen. Mr. Brigham replied that the houses were laid out the way they were to fit in with the rest of the neighborhood.

Chairman Rheaume noted that the two New Englander homes facing the driveway would be screened heavily so they weren't visible to people passing by on Maplewood Avenue. He said a concept that worked in another neighborhood was to make the homes look like outbuildings to a larger parcel, and he asked whether that had been considered.

Mr. Brigham said the design had a basic Colonial look with an attached garage and that more attention needed to go on the outside. By having the fronts face one another and create a small courtyard in between, he felt that they didn't have to look like outbuildings. He said they could consider it, however. They discussed it further. Mr. Brigham said he thought the single-family houses fit the nature of the neighborhood.

Chairman Rheaume asked what was proposed for preservation as a balance of the public right versus the right of the property owner. Attorney Phoenix said they had to go to the Planning Board but emphasized that the three owners would be required to maintain the pond and the area around it and that it would be vetted with the City's Legal staff and the Planning Board and permanently recorded. Chairman Rheaume asked what would happen if the condominium owners decided to change the condominium documentation in the future. Attorney Phoenix said the owners could not violate the Zoning Ordinance.

Chairman Rheaume asked about a conservation type of easement around the pond area as a gesture toward recognizing the importance of the surrounding area as well as the neighbors' concerns. Attorney Phoenix said they would be willing to consider it. Mr. Brigham said he would be willing to enter into a conservation easement agreement.

Vice-Chair LeMay asked whether the property would remain as one parcel and built out with three units, with no convertible land left. Attorney Phoenix said there was no intention for convertible land at all.

Attorney Phoenix then reviewed the criteria in detail and said the project met them all.

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

The following, which included some abutters, spoke in opposition to the petition: Jim Fernald of 1000 Maplewood Avenue, Sherry Branston of Woodbury Avenue, Paul Mannle of 1498 Islington Street, Francesca Fernald of 1000 Maplewood Avenue, Peter

Brasciano, Zoe Stuart of 8 Fairview Drive, Rick Becksted of 1395 Islington Street and Page Trace of 27 Hancock Street. Their stated concerns included the following:

- Water drainage and possible flooding issues.
- Maintaining the wildlife habitat of the pond.
- There was no hardship as the lot could be developed as a single-family property in keeping with the abutting lots, which were zoned single-family for a reason.
- The property could be sub-divided into two properties.
- The proposal should be more in keeping with the single-family character, density and impact of the neighborhood, with one driveway.
- The property owner was driven by financial considerations.

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

Attorney Phoenix stated that the hardship was in the land and not in the proposed or existing owner and that it was clear that the irregular lot was a hardship. He said it was up to the Board to balance the property rights of the current owner against the effect on the abutters and public. Complying with those concerns was an unfair treatment of the property owner, given the size and shape of the lot. He said the two or three abutting lots were not the locality but the overall area, and he emphasized that the area had small houses on large lots and large houses on large lots, including apartment complexes and an armory, so the applicant's lot was distinguishable from many in the general area. He said the applicant had to go through the Planning Board review for storm water management. He said the applicant was willing to protect the pond. He noted that the lot had a business on it for decades, and he urged the Board to address the application on its own merit and not because of what someone might do in the future.

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

### **DECISION OF THE BOARD**

Mr. McDonell said he was pleased with the application and felt that the concerns were with the two back units were addressed. He noted that the conservation element was discussed. He said he had far fewer concerns that he initially did. As to whether there should be one, two or three units, he said three looked okay and that there were no setback issues as far as neighboring properties.

Mr. Parrott said he agreed that it was a better proposal but that he still had some concerns with respect to hardship. It was a big, oddly-shaped lot, but it had been zoned one way for a long time, and the zoning was pretty clear. He said it didn't say that alternatives could be considered if someone was over an x-number of square feet. He said the hardship was presented by the land and that it would support one or two houses nicely.

Mr. Moretti said he saw it as a commercial business in a residential district. He said he could see three buildings, but he understood the abutters' concerns that it could cause urban sprawl. He said it was an odd-shaped lot with a pond on it, which was unusual,

and that he understood the water issues but thought they existed when the commercial building was on the property. He said he could accept two houses with a shared driveway but had trouble with the third house.

Vice-Chair LeMay said that at first, he thought the property looked like a big lot, a swamp with some appeal, and was unusable land. He said the lot was very big, and even if it were reduced by the pond area, it would still be substantial. He felt that the spirit of the Ordinance was met. He said the setback was to protect the wetland and that it was still dry land around the wetland, and he felt there was enough space. He asked whether it was in the better interest of the neighborhood to develop the property with a little bit of increased density. He said it made good use of the property by being a nice condominium development with a pond out back, and he noted that the owners would preserve the pond. On the other hand, he asked what the point was of having an SRB zone if it wasn't Single Residence. He said he saw the hardship but wasn't quite sure how it related to the request.

Chairman Rheume said he was torn about the application. He said there were unique things about the property, and that it was large. He mentioned another lot that could come close to it in size, outside of the church lot. He mentioned another lot off Fairview Drive that wasn't as big but abutted the pond, and it only had a small access way to Fairview Drive. He said one thing that helped sell the proposal was the proximity to Maplewood Avenue for fire and emergency services. He thought there were some hurdles with the much longer driveway, and he didn't see that the property would start an avalanche of similar properties. He thought there was an opportunity for the public to get some benefit by the preservation of the pond and marsh area. He referred to the balancing test and said the Board could demand more in the conservation area, or do a tradeoff of having three homes instead of two. They could make a stipulation to the Planning Board that the applicant would do a conservation easement. He noted the comments about a single-family home on the very large lot, and he pointed out that it had been a business before and not a single-family home. He said someone could build a large structure, so he thought there was some hardship based on the size of the lot. He discussed the emergency access. He said he thought it was a potentially workable solution and could work toward the greater public good.

*Vice-Chair LeMay moved to **grant** the variances for the application, and Mr. McDonnell seconded.*

Vice-Chair LeMay stated that granting the variances would not be contrary to the public interest and the spirit of the Ordinance would be observed. He didn't think the addition of three single-family homes would change the neighborhood, especially due to the distribution of the houses. He didn't see any threat to the public safety, health and welfare or public rights. He said that granting the variances would do substantial justice since the benefit to the applicant would not be outweighed by any harm to the general public, and he hadn't heard anyone say how it would compromise their property or individual interests. The value of surrounding properties would not be diminished because three single-family homes as opposed to an empty lot with a dubious future were better than not knowing what might happen one day. He said it was consistent with

developments in the area. As far as unnecessary hardship, the applicant identified items such as the pond that would push construction in front of the property. The property was quite large and irregularly shaped, it met all the setbacks, and it wouldn't encroach on the neighbors. He noted that good access on Maplewood Avenue was an important factor.

Mr. McDonell said there were large lots with bigger houses but also small lots with small houses, so he felt it would be difficult to distinguish. He said he didn't think the intensity of the condos would be that much different than the uses down the street. He didn't see any harm to the general public that would outweigh the harm to the applicant. As far as unnecessary hardship, he said it was an unusual-shaped lot and didn't think the surrounding properties would be diminished any more than the development that could occur on the property, like a large house that would not fit in as well as he thought the three condominium units would.

Chairman Rheaume suggested a stipulation that some portion of the underdeveloped portion of the lot be placed in conservation easement to be determined by the Planning Board during its Site Plan Review. He said it was important to note that the Board was giving a lot to the developer, but the public would get something in return. He said it would mean that a portion of the back portion toward the pond would be placed in conservation easement in perpetuity of the property and that the owner could not do any development behind the units. He said it could also include future protection of the pond and wetlands area. He said the Board could leave it up to the Planning Board, which would be another opportunity for public comment.

*Vice-Chair LeMay and Mr. McDonell stated that they accepted the stipulation.*

Mr. Moretti said he would support the motion, even though he was still concerned about a few things that the abutters brought up, like the water issue. He recommended that the Planning Board review the water control at the site review and make sure it was up to par.

Chairman Rheaume said he would support the motion. He said the Board had discussed subdividing the lot but the applicant would have to go before the Board for street frontage and so on and the pond land would be divided. He said there was a unique set of circumstances and the three homes were appropriately sited and met all the setbacks. He said he was okay with the three units, with the idea that the public was getting something back by having the pond preserved.

*The motion **passed**, with 4 in favor and Mr. Parrott voting against the motion.*

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- 6) Case #8-6  
Petitioners: Andrew F. & Jennifer B. Cotrupi  
Property: 137 Wibird Street  
Assessor Plan: 134, Lot 48  
Zoning District: General Residence A  
Description: Subdivide one lot into two.

- 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 proposed Parcel B to have 58.85'± of continuous street frontage where 100' is required.
  2. A Variance under Section 10.440 to allow proposed Parcel B to contain an accessory structure as a principal use.

Mr. Johnson and Mr. Formella resumed their voting seats.

The owners Andrew and Jennifer Cotrupi were present to speak to the petition. Mr. Cotrupi said the parcel was unique and had more than enough space to accommodate two lots, and noted that they didn't need setback relief. He said the carriage house didn't have a lot of use, and they would leave it alone until the property was developed. Mr. Cotrupi reviewed the criteria and said they would be met. He also noted that the neighbors expressed no concern about the project.

Chairman Rheume asked how old the map was, and Mr. Cotrupi said it was from 1905 to 1915. Chairman Rheume said there was a similar pattern across the street from the applicant. He asked what the timing was for the carriage house, noting that it was awkward to allow a principal use to a garage. Mr. Cotrupi said he was told that it was the most practical way to do it. Chairman Rheume said the Planning Board would review it at the Site Plan Review. He asked whether it would be a serious detriment if the Board chose not to grant that variance. Ms. Cotrupi said the intent was for the garage to go down and the building to go up. She further described the carriage house.

Vice-Chair LeMay asked why they proposed putting in parking spaces in front of the home. Ms. Cotrupi said it was for convenience and wouldn't look like two driveways near the neighbors.

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

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

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

*Mr. McDonell moved to **grant** the variances for the application as presented and advertised. Mr. Moretti seconded the motion.*

Mr. McDonell stated that the project harked back to the original intent of the corner lot. He said granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the use didn't conflict or alter the character of the neighborhood. The intent of the parcel from 100 years before was what the neighborhood had become. The garage use wouldn't be a permanent one, and it was something that would not harm the public, and he noted that it would be demolished eventually. He also thought that having one construction event out of concern for the neighbors was good. Mr. McDonell said granting the variance would do substantial justice, and he didn't see

any harm to the public or other individuals or any concerns that would outweigh the benefit to the applicant. He said the abutter who wrote the letter in opposition had concerns about the green space being diminished, but Mr. McDonell said he wasn't sure how it would be diminished and he thought it would be in keeping with the neighborhood, so the value of surrounding properties would not be diminished. Relating to the literal enforcement of the Ordinance, Mr. McDonell said it was a corner lot and bigger than a lot of lots in the area, and allowing the lot to be bisected would line it up with the neighboring lots. There would be no fair and substantial relationship between the general public and the applicant if the petition was denied, and the proposed use was a reasonable one. For those reasons, Mr. McDonell said he would approve the petition.

Chairman Rheume noted for the record that one letter of opposition was received and he noted what the concerns were.

Mr. Moretti said he concurred with Mr. McDonell and noted that the Board saw similar applications once or twice a year, based on subdivision plans of 1910 or so. He said the original subdivision was intended to be two parcels but didn't get broken up. He said the application had broken the line back up to give more space, and the property would bring back what the subdivision may have looked like back then and would let the applicant sell the other home and move into the carriage house.

Vice-Chair LeMay said he would not support the project because he didn't feel that the entire plan was far enough along to be a commitment. He said it would create a separate lot, and the Board saw that frequently, but more and more often, there was more reason not to do it. He said it looked workable, but he thought it would knock the property down, and he was not convinced that it was in the public's or neighborhood's interest.

Mr. Parrott said he had a hard time with the hardship criteria and agreed with Vice-Chair LeMay's comment.

Chairman Rheume said he would support the project. He said he did see a hardship, in that the home was positioned with the idea that the conceptual lot from the original subdivision of 1910 could continue to be used. He said the home was positioned well on it and would create a better rhythm to the block. He said the tax map had the same sort of rhythm broken up into smaller projects. He said it would make the neighborhood feel as it should. He said he had heartburn with leaving the garage structure but believed there was enough of a plan and knew it would be demolished in the future. He thought it would be better for the neighborhood to have that structure there for a while.

*The motion **passed**, with 5 in favor and Mr. Parrott and Vice-Chair LeMay voting against the motion.*

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- 7) Case #8-7  
Petitioner: Old Tex Mex, LLC  
Property: 3510 Lafayette Road

Assessor Plan 297, Lot 8

Zoning District: Gateway

Description: Convert existing structure into twenty-five residential dwelling units.

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

1. A Variance from Section 10.440, Use # 1.43 to allow a 25-unit multi-family dwelling where such is not allowed.

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

Attorney Peter Loughlin on behalf of the applicant was present to speak to the petition, and he introduced one of the principals, Mike Brown. Attorney Loughlin stated that the property had had a lot of variances over the years and was zoned commercial. They were requesting residential use and wanted to convert the existing structure to 25 units. He said there would be no changes to the exterior but would be significant changes to the site. Attorney Loughlin said they met a great majority of the conditions in the Gateway District for housing, but the most challenging was the existing building because it wasn't new construction. He reviewed the reasons why the applicant was entitled to relief, and he went through the criteria and said they were met.

In answer to Chairman Rheume's questions, Mr. Brown said the anticipated gross floor area for the dwelling units was 800-1000 s.f. per unit, the units would all be apartments, and that two units would be dedicated workforce housing. Chairman Rheume asked Mr. Brown whether he was amenable to a stipulation stating that two units would be dedicated to workforce housing, and Mr. Brown agreed.

Chairman Rheume asked about Item 10, electric demands. Mr. Brown said they outgrew the business at 3510 Lafayette Road and moved to Heritage Avenue and put a solar array on the roof, which was set up to be a net metering system. He said they were allowed to use the Eversource credit for any of their buildings.

Mr. Moretti asked whether there was a common area for children. Mr. Brown said there were a few benches in the front and some green space, but they hadn't outlined a place for kids to play yet. Mr. Moretti asked Mr. Brown if he had talked to the City or bus lines about bus stops, and Mr. Brown said he had not but would be happy to.

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

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

### **DECISION OF THE BOARD**

*Mr. Parrott moved to **grant** the variance for the application as presented and advertised, with the stipulation that at least two units of the proposed conversion would be dedicated workforce housing. Mr. Moretti seconded the motion.*

Mr. Parrott stated that the building was unusual and had evolved over many years. He said he had seen the for sale and rent signs on the road for a long time. He said the presented situation was consistent with what he had observed and noted that it was a use variance and that it was an appropriate place for residential. The road was an odd stretch that had single-family homes, a mobile home park across the street, and a large motel nearby, so it was a mixed-use area, and he said that converting it to residential would seem appropriate and would fit right in.

Mr. Parrott stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the public interest would be served by more rental units, which were in demand in Portsmouth, and the apartments would be on a bus route. He said the project had some of the desires of the Master Plan, and the area had been deemed appropriate for residential. He noted that it hadn't worked out for other purposes over the last few years. It would do substantial justice because the owners had no luck trying to keep it as a commercial venue, and it wasn't for lack of exposure because it was on one of the busiest roads in Portsmouth. He said granting the variances would not diminish the value of surrounding properties and would be a positive change. It would be sandwiched between a few single-family homes, the motel next door, and the mobile home park across the street, and he thought it might help surrounding property values. He said the property had special conditions due to its location and had not attracted commercial interests. It was different from other properties in the area due to its size. Mr. Parrott said the project met all the tests for approval of the use variance.

Mr. Moretti said he concurred with Mr. Parrott. He said it was on a busy road, but there were lots of people commuting to Portsmouth for work who had a hard time getting into town. The traffic wasn't as heavy on Lafayette Road and might allow downtown workers to move to the complex. He said the apartments would be easy to rent and would satisfy the needs of the owner and the City.

Chairman Rheume said he would support the application and thought it was a neat idea for reconverting the property. He noted the housing crunch in Portsmouth and said that an existing building would be repurposed and would attract some folks. It would help the balancing test by providing two units for workforce housing and would benefit the City.

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

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Chairman Rheume noted that the applicant for Case 8-3 that was postponed to the end of the meeting was still not present.

*Mr. Parrott moved to **postpone** the petition to the September meeting, and Vice-Chair LeMay seconded.*

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

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- 8) Case #8-8  
Petitioners: James C. Lucy Revocable Living Trust, James C. & Kimberley A. Lucy, Trustees  
Property: 127 & 137 High Street  
Assessor Plan: Map 118, Lots 20 & 21  
Zoning District: CD4-L1 and Downtown Overlay Districts  
Description: Construct two-family dwelling unit with parking underneath.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Sections 10.5A41.10A & 10.5A43.31 to allow a three-story building where up to a two-story building is the maximum permitted.
  2. Variances from Section 10.5A41.10A to allow the following:
    - (a) A minimum lot area per dwelling unit of 1,200± s.f. where 3,000 s.f. is required.
    - (b) A duplex building type where duplexes are not permitted in the Downtown Overlay District.
    - (c) The minimum ground story to be 8'8"± in height where 11' is required.
  3. A Variance from Section 10.1114.20 to allow a 20'± maneuvering aisle where 24' is required.

## DECISION OF THE BOARD

A decision on the applicants' request to postpone was made earlier in the evening.

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## V. OTHER BUSINESS

Chairman Rheume said he had talked to the Planning Department about doing a work session separate from the regular monthly meeting to give the Board a chance to review issues such as the Board's expectations for him as Chairman, alternates' participation, methods used for coming up with motions, and explaining the criteria process to the new Board members. It was decided to hold the meeting sometime in September or October.

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## VI. ADJOURNMENT

*It was moved, seconded, and passed by unanimous vote to adjourn the meeting at 11:00 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary