

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

July 17, 2012

MEMBERS Chairman David Witham; Vice-Chairman Arthur Parrott; Charles LeMay, Christopher Mulligan, David Rheaume; Alternates: Patrick Moretti and Robin Rousseau

EXCUSED: Susan Chamberlin and Derek Durbin

I. OLD BUSINESS

A) Case # 6-6

Petitioner: Wright Ave. LLC

Property: Off Wright Avenue

Assessor Plan 105, Lot 18

Zoning District: Central Business B

Description: Provide parking, in connection with the construction of a 4 to 5 story mixed use building that does not meet the parking requirements.

Request: 1. A Variance from Section 10.1112.30 to allow 15 to 23 parking spaces to be provided for a combined retail/residential use where 30 parking spaces are required.

2. A Variance from Section 10.1114.32 to allow vehicles to enter and leave parking spaces by passing over another parking space or requiring the movement of another vehicle.

(This petition was postponed from the June 19, 2012 meeting)

SPEAKING IN FAVOR OF THE PETITION

John Chagnon of Ambit Engineering came before the Board representing the applicant, Wright Avenue, LLC and Steven Kelm. Mr. Chagnon said they were seeking two variances to go from the permitted 30 spaces to 23 if stacking were allowed, and 15 parking spaces if stacking were not allowed.

Mr. Chagnon noted that the Planning Department issued a memorandum outlining issues, and reviewed the applicant's letter outlining their reasons for the petition. He noted that their proposal would allow retail space on the first floor of the State Street side instead of parking spaces which

would conflict with the City's Master Plan, and the stacked parking would allow 14 unit owners to have two vehicle spaces per unit. Mr. Chagnon said the proposal would be consistent with similar uses in the area, would improve the current parking lot, keep the area vibrant, and not decrease the surrounding property values. Mr. Chagnon said the public would not be impacted by the variance, in fact the public would be served by first floor public space.

Ms. Rousseau asked if the HDC had any additional comments on the project. Nick Cracknell, Principal Planner said the HDC had two informal work sessions, and the proposal was on the next agenda for another work session, but he didn't believe the HDC had any formal recommendations for the BOA at that point, perhaps because they were waiting to hear the decision of the BOA. If the Board approved, it would be important that a stipulation be considered for alternative ground level access locations to prevent restrictions because the applicant only showed one point of access. Mr. Cracknell said the applicant requested the City grant access across Chapel Street behind the Connie Bean Center, but he hoped the BOA would not accept only one point of access.

Ms. Rousseau asked if there was a legal definition of parking space in the city, and if stacked parking was legal. Mr. Cracknell said the Ordinance defines a stacked space as one behind the other such as a garage parking space, and another behind. He said he believed the Ordinance defined the dimensions. Ms. Rousseau said the Ordinance only allowed for a two-family dwelling, but nothing more. Mr. Cracknell said that was correct, the Ordinance only allowed for single and two-family dwellings to use stacked parking.

Ms. Rousseau said it would be a judgment call whether or not the stacked parking space in this proposal would be legal. Mr. Cracknell said since one or two families are permitted uses for tandem spaces, the assumption is that single ownership is consistent so long as each unit has the same owner. Mr. Chagnon said that was the intent, that each residential unit would be assigned two stacked spaces.

Ms. Rousseau asked if the applicant considered fewer units, parking spaces, and variance requests. Mr. Chagnon said he wasn't part of the design team, and expected the HDC to comment further on whether the mass and scale were appropriate to the area, but at this point they were working on the City's calculation of 1.5 spaces per unit, and since they couldn't do half a space, they were requesting a variance for two stacked spaces. Ms. Rousseau said two stacked spaces was just one long space, and that was why she was asking what the legal definition of a parking space was. Mr. Chagnon said he thought the Ordinance listed the dimensional and square foot requirements, but commercial uses have to have spaces free from obstruction.

Vice-Chair Parrott asked if the proposal entailed asking the City to do away with any of the head in parking along the Connie Bean Center, or along Wright Avenue. Mr. Chagnon said the access driveway shown on the plan is aligned with the section of Wright Avenue that is striped off and is a part of an agreement with the City and a prior owner to maintain access to that lot. Vice-Chair Parrott asked if there was any intention to ask the City to eliminate any of those spots to the right and left. Mr. Chagnon said they were not. He said they might be looking at an easement from Chapel Street which would allow even more spaces on the Wright Avenue side.

Mr. Rheume asked what they would do if the preferred proposal they were requesting was not approved. Mr. Chagnon said if their proposal was not approved and changes to Ordinance continued, they would have to reconfigure or build one less unit. Mr. Rheume asked if the 23

spaces were all designated for individuals owning or renting units with none for retail. Mr. Chagnon said he was not sure if he could give a definite answer because the proposal still had to go through the HDC and Site Review, and he was not sure if they were required to assign all the parking spots specifically. The developer was familiar with downtown developments, and a lot of the owners could decide to buy two units and put them together or they might only need one car so there was some flexibility needed.

Owner, Steven Kelm said most downtown unit buyers are single individuals, but that might change with Baby Boomers so the intent was to give an average and they were proposing something different by assigning two stacked spaces to per unit which would be no different than a duplex but in an urban environment. He said the Ordinance says they needed 1.5 per unit and the proposal was to have two parking spaces of 8.5' by 19' parking spaces and then a 24' travel lane.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Mulligan said the request was for fairly significant relief, but they were all in agreement that they City hadn't hesitated to grant relief from parking regulations in the past.

Vice-Chair Parrott agreed that the proposal would provide a parking upgrade from what was there and that the development was appropriate to the area and took the Master Plan recommendations into consideration.

Ms. Rousseau said she did not support the proposal and it bothered her that the HDC had not made recommendations in reference to the essential character of neighborhood. She said she would have liked to have had the HDC review and share their thoughts before the BOA put their stamp of approval on the project.

Mr. Rheume said he was also in opposition because granting the variance would be support an unusually large structure on a rather small footprint. He said he also didn't believe the hardship test had been met, and he was not convinced the retail space offset the number of units above.

Chairman Witham said he supported the proposal because granting a parking variance would give some support to a building that size, though they would need to go back to the HDC because it is beyond the BOA's purview to regulate mass and scale, and they still need to know if the retail space on the ground floor would work.

Chairman Witham reiterated that approval should have a stipulation that would transfer to alternative entry/access locations.

*Mr. Mulligan made a motion to **grant** the petition as presented and advertised with the following stipulation:*

Stipulation:

1. That this approval will not be limited to the specific driveway access location or building design shown on the plan submitted with this application but will extend to the alternative building designs or entry locations presented for State Street and/or Chapel Street per approval of the Historic District Commission and Planning Board.

Vice-Chair Parrott seconded, and the motion was passed by a vote 4-3 to grant for the following reasons:

Review Criteria:

- The proposed parking will support a mixed use development in keeping with others in the immediate vicinity so that granting the variance will not alter the character of the neighborhood nor threaten the health, safety or welfare of the general public.
- A creative parking solution will support the purpose of the Central Business B District which is to promote a wide range of uses and encourage pedestrian flow.
- In the justice balance test, denying the variance will result in a detriment to the applicant that will not be balanced by any gain to the general public.
- Parking for a project similar to others in the nearby area will not diminish the value of surrounding properties.
- The special condition of the property is that the lot is not deep enough to provide the required parking. This is a reasonable proposal that makes efficient use of the space to fulfill as much as possible of the parking needs generated by the proposed project.

B) Case # 6-7

Petitioner: 45 Pearl Street Properties, LLC

Property: 45 Pearl Street

Assessor Plan 126, Lot 30

Zoning District: Mixed Residential Office

Description: Amend the stipulations attached to Variances granted December 20, 2005 from Article II, Section 10-207 & Article IV, Section 10-401(A)(1)(b).

- Requests: 1. Amend the stipulation designating the hours of operation from “9:00 a.m. until 11:00 p.m., Sunday through Saturday, with the exception of New Year’s Eve until 1:00 a.m.”, to the following hours of operation: (a) Sunday through Thursday, from 9:00 a.m. until 11:00 p.m.; (b) Friday and Saturday, from 9:00 a.m. until 12:30 p.m.; and, (c) New Year’s Eve remaining from 9:00 a.m. until 1:00 a.m.
2. Amend the stipulation, designating that amplified music is not allowed beyond 9:00 p.m. on any day, to allow amplified music: (a) until 11:00 p.m. on any Sunday through Thursday that is not a holiday; and (b) until 12:30 a.m. on Friday, Saturday, and holidays.

(This petition was postponed from the June 19, 2012 meeting)

DECISION OF THE BOARD

Mr. Rheume and Ms. Rousseau recused themselves leaving only five voting members. Chairman Witham gave the applicant the option of postponing, and Mr. Gary Dodds said he would like to postpone until they had a full Board.

*The Board agreed to **postpone** the petition to the July 24, 2012 meeting.*

=====

II. PUBLIC HEARINGS

1) Case # 7-1

Petitioner: Michael K. Glynn

Property: 197 Raleigh Way

Assessor Plan 212, Lot 104

Zoning District: General Residence B

Description: Replace existing shed in rear yard with a larger structure.

- Requests: 1. A dimensional Variance from Section 10.521 and Section 10.572 to allow a right side yard setback of 2.6'± where 10' is required for an accessory structure.
- 2. A dimensional Variance from Section 10.521 and Section 10.572 to allow a 0'± rear yard setback where 10' is the minimum required for an accessory structure.

SPEAKING IN FAVOR OF THE PETITION

Mr. Michael Glynn distributed a signed letter of support from a neighbor, and then went over the conditions of his lot with a large tree in the middle of the back yard that would make it difficult to place a storage shed in a convenient location to meet the Ordinance.

Mr. Rheume asked if the proposed shed would be prefab or custom built. Mr. Glynn said he was going to build to the dimensions.

Discussion ensued among the Board members and the applicant regarding the additional setback in the rear with the applicant agreeing to a 2' setback.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chair Witham said the Board could only grant less of a setback, not more, and he would only support a motion that has a 2' minimum setback at the rear because allowing the placement of a shed without a setback could create an issue with maintenance of the shed or a fence for current or future owners and neighbors.

Vice-Chair Parrott said the shed should be no greater than 10' by 12', but orientation could be up to the applicant so long as the roof runoff didn't dump water on the adjacent property.

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

Stipulations:

1. That the shed will be constructed with a minimum rear yard setback of 2’ and a minimum right side yard setback of 2½’.
2. That the size and orientation of the shed may be altered but the size will not exceed 10’ x 12’.
3. That the roof of the shed will be designed so that water runoff will directed away from abutting properties.

Mr. Rheume seconded and the motion was passed by a unanimous vote of 7- 0 for the following reasons:

Review Criteria:

- While the replacement shed is larger than the existing structure, with the stipulations attached to the Variances, it will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by an improvement to the rear setback.
- In the substantial justice test, the property owner will be allowed full use of the property without any undue negative impact on neighbors.
- With the stipulated setbacks, the replacement shed will not diminish the value of surrounding properties.
- There is no fair and substantial relationship between the general purposes of the Ordinance and its Application to this property as the intent of the Ordinance is to maintain distances from the property lines. Allowing the shed replacement with the stipulated setbacks is a reasonable request which will meet that intent.

2) Case # 7-2

Petitioner: John F. Green & Alison L. Zaeder

Property: 37 Whidden Street

Assessor Plan 109, Lot 3

Zoning District: General Residence B

Description: Replace rear deck and stairs in same footprint.

Requests: 1. A dimensional Variance from Section 10.521 to allow a right side yard setback of 0’± where 10’ is the minimum required.

2. A dimensional Variance from Section 10.521 to allow a rear yard setback of 15.5’± where 25’ is the minimum required.

3. A dimensional Variance from Section 10.521 to allow building coverage of 49%± where 45% is the maximum building coverage allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Moe Houde of Houde Construction came before the Board on behalf of the owners, noting that the deck would remain on the same footprint and the HDC approved the material at their last meeting. He referred to a letter from the owner that addressed the criteria.

Mr. Rheume asked if there was any way to reconstruct the porch so it could provide some relief to the side of the property. Mr. Houde said they considered it, but they hoped to maximize space, and didn't want to encroach too much on a set of stairs and a crawl space with access doors.

Mr. Rheume asked if they had any sense as to code requirements what kind of leeway they would have in regards to the setback. Mr. Houde said he did not. Chairman Witham said his sense was that they might get a couple of inches smaller but couldn't get two feet or they would end up with a 12" stair.

Vice-Chair Parrott asked if they would do any ground work that would infringe on neighbors. Mr. Houde said they might need to replace some of the existing footings, but it shouldn't encroach on the neighbors.

Vice-Chair Parrott asked how much they could bring it in to get some clearance while still having a functional space. Mr. Houde said it seems to have worked fine over the years and it would be ideal for the owners to keep same footprint, but they could cut a couple of feet off to get someone in for maintenance if that is what the Board wanted. Vice-Chair Parrott said even a foot or a foot and a half for access would be helpful.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Rheume made a motion to **grant** the petition as presented and advertised. Mr. Moretti seconded, and the motion was passed by a unanimous vote of 7 to 0 for the following reasons:*

Review Criteria:

- It will not be contrary to the public interest to replace a deck and stairs in the same footprint.
- The spirit of the Ordinance will be observed by allowing replacement of a structure that has existed satisfactorily for some time on a lot where the setbacks offer little leeway.
- Substantial justice will be done by allowing the homeowners continued use of a deck by replacing a deteriorated structure.
- A new structure in the same footprint will, if anything, increase the value of surrounding properties.
- The special condition of the property is the placement of the home virtually on the property line with the deck following the line of the home. Replacing the decking so that it is safer and up to code is a reasonable request.

-
- 3) Case # 7-3
Petitioner: Antonios & Chrisoul Tzortzakis
Property: 413 Islington Street
Assessor Plan 144, Lot 33
Zoning District: Mixed Residential Business
Description: Outdoor retail sales and storage.
Request: 1. A special exception from Section 10.440 to allow outdoor retail sales (Use 8.31) in a district where such use is only allowed by special exception.
2. A Variance from Section 10.440 to allow outdoor storage of machinery, equipment and vehicles (Use 20.61) in a district where this use is not allowed.

SPEAKING IN FAVOR OF THE PETITION

Vice-Chair Parrott recused himself from the discussion.

Attorney James Rizzo, representing the applicant, said the applicant ran his business from his Islington location over the last 17 years, and did not know he was in violation until a new neighbor moved in and complained. Attorney Rizzo reviewed the standards for the special exception variance and their response to the Five Criteria.

Chairman Witham asked how many bikes were sold on average during the summer months. Mr. Tony Tzortzakis said he had only sold about 30 in the past year. Attorney Rizzo said he didn't sell as many over the last year because of the article in the paper and people thinking he was closed. Attorney Rizzo asked how many he sold the previous year, and Mr. Tzortzakis said he sold many, maybe 300 because so many people couldn't afford bikes from the other shops.

Chairman Witham said the Board's role was to uphold the Ordinance and they couldn't include sentimental value. Although he would like him to stay in business, he watched storage build up over the last 25 years, though it had cleared up over the past few weeks. Attorney Rizzo said Mr. Tzortzakis was banned from the recycling dump for a year because he was taking a bike out, and he wouldn't pay for it when they asked so he couldn't get rid of his excess for awhile. They have since reinstated his dump privileges so the yard has been cleaned up considerably since he's thrown 300 bicycles away. Chairman Witham asked if it was necessary for him to keep that many bicycles to operate his business and Attorney Rizzo said he needed some space for parts, but he got rid of whatever he could.

Ms. Rousseau asked why the City didn't consider it a grandfathered use if it had been continued for 17 years with no changes. Mr. Cracknell said he couldn't speak for the Legal Department but his understanding and review of the files in the Building, Inspection and Planning Departments indicated this use was never permitted under the Zoning Ordinance over the past 17 years to the present. He said the Zoning Ordinance and the Table of Uses have changed over the past 17 years, but there was no evidence that this use was ever legally established which would be needed to grandfather the use.

In response to further questions from Ms. Rousseau and Mr. Rheaume regarding Mr. Tzortzakis' long time operation, Attorney Rizzo said he had been approved for indoor repairs, but not outdoor sales. He said he spoke to people in City Hall who said there was a different City manager and

different planners 17 years ago and nobody seemed to care because Tony wasn't doing any harm. No one complained until the neighbor next door complained to the zoning officer and the City attorney issued a cease and desist.

Mr. Rheume asked if a name had been registered with the State of New Hampshire for the business the applicant was operating. Attorney Rizzo stated that he doubted it. What he had was a sign saying "Tony's Bicycles."

Mr. Rheume suggested they set stipulations restricting hours and time of year since the application said the hours of operation were limited and the business was rarely in operation during winter. Attorney Rizzo said that would be hard to say because he lives there and if somebody came to the door and wanted a bicycle or a snow blower he would sell it to them, so it could be listed as a home occupation and the purchase and sale would depend on weather and how he felt. Mr. Rheume asked about the display of items during those times, and Attorney Rizzo said they could list the hours of 8 a.m. to 6 p.m. Ms. Rousseau asked if there were any complaints about his hours of operation, and Attorney Rizzo said there were no issues except for a neighbor who looks out the back window, and there was a letter saying they would not object so long as the business was temporary.

Mr. John Golumb of 30 Salem Street, Nancy Emerson of 442 Islington Street, and Bob Shouse of Dennett Street also spoke in favor of the applicant.

Tony's daughter, Tina Borden said her father's operation started off as a hobby that helped keep him occupied, but since he is disabled, it also helped support his family. Ms. Borden said her father was nearly 80 years old, and she and her brother had no plans to take over.

Mr. Rheume asked how they would feel if no one in the family were able to run the business and they sold the property and someone else had outdoor sales that required more parking. Attorney Rizzo said it would be a nonconforming use if the operation expanded, and they would have to come back to the Board for approval. He added that although the applicant's daughter said she would not want to operate business, and there was a letter from the neighborhood that said approval would be temporary, they might want to do something to keep their options open so that the applicant's wife or son would have an income if they wanted to run the business if anything happened to the applicant. Mr. Rizzo said it was not contrary to zoning and his efforts to run the business in a quiet and proper way met the spirit of the Ordinance.

Chairman Witham said one of the criteria for granting the special exception is that it couldn't result in unsightly outdoor storage. The site was cleaned up, but a month before it fell under the unsightly and the site plan still showed storage on the right side of the driveway.

Mr. Cracknell said one of the requests from an abutter was that approval would expire when the current owner no longer owned the property. He said he just received the letter, but assumed it would be possible to put a condition on the special exception, but not on a variance because a variance runs with land irrespective of ownership. The special exception could have a termination date with the current applicant as the principal use of the property for outdoor retail sales. The accessory use of equipment storage would run in perpetuity, but as an accessory to the retail sales which would only be for the current owner so it would be possible.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Rheume said there's a great deal of neighborhood sympathy for Mr. Tzortzaki, but he could not be in favor of the motion as proposed because the Board has an obligation to look to at future uses for the property and how granting the special exception and a variance would affect the future for the neighborhood after these individuals may, for whatever reason sell the property to someone else. He said the property is a two-family home in a relatively congested location, but naturally conducive to outdoor sales of items. The children have indicated they have no interest in it, but they needed to consider the possibility of someone else comes along later with a clever business idea and using the exception to operate a business that would be more objectionable for the neighborhood as a whole. He said there could be a condition to the special exemption that could only be applicable to the applicant, and as said that would include Mrs. Tzortzakis who was also listed as an applicant. They could also put a timeframe restriction for hours of operation from 8:00 a.m. to 6:00 p.m. and also stipulate that outdoor sales that outdoor sales would not normally occur in the winter time. Mr. Rheume said he could support the motion if it had those kinds of stipulations.

Ms. Rousseau said her position was that it's a mixed use neighborhood, not a residential specific neighborhood and if we have another owner wants to have a small business like this doing bicycle repairs and sales then they could come back and ask to alter that variance. She said there was lots of support from neighbors and were no issues regarding hours so she was not in favor of over-stipulating things. If issues come up, the Code Enforcement Officers could come back at and alter their request.

Attorney Rizzo addressed the Board while out of the public hearing to remind the Board that the applicant applied for the sale of more than bicycles such as a lawnmower or a snow blower on occasion, so to limit to bicycles would interfere with his sales.

Chairman Witham said he would support the motion. He pointed out for the applicant and his attorney that when granting petitions they make a motion to grant as presented and advertised, and he wanted them to be cognizant and respectful that it was presented that the storage area would be kept to the back 50' feet of that 100' deep yard, and that they didn't want to see items creeping forward as it had.

*After a discussion of the stipulations Ms. Rousseau made a motion to **grant** the petition as presented and advertised with the following stipulations:*

Stipulations:

1. That there will be no storage of gasoline, oils, or other hazardous or toxic waste or materials on the property.
2. That the outdoor storage permitted by the Variance will be only in the rear half of the eastern side yard (50' x 24'), as presented, in support of the outdoor retail sales for which the special exception was granted and is permitted to be located.

3. That the outdoor retail sales be limited to the sale of bicycles.

Other:

While not set out as stipulations, the following were noted by the Board:

1. It was recognized that the occasional yard-sale item (i.e. snow blowers or wood splitters) would also be sold, subject to the same storage provisions as the sale of bicycles.
2. As set forth in the Application and as presented, the customary hours of operation will be from 8:00 a.m. to 6:00 p.m. with limited sales in the winter period.

Mr. Lemay seconded, and the motion for a special exception and a variance was passed by a vote of 5 to 1 with Mr. Rheume voting against the motion, for the following reasons:

Review Criteria:

- This particular use is permitted by special exception.
- With the attached stipulations, there will be no hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- There will be no detriment to property values or change in the essential characteristics of the neighborhood. The business has been place for many years, while property values in the area have continued to increase.
- With this low traffic business, there will be no creation of a traffic safety hazard or increase in the level of traffic congestion.
- With an individual working out of his home and given the nature of the business, there will be no excessive demand on municipal services or increase in storm water runoff.

The Variance was granted for the following reasons:

- This retail sales (bicycle) business and related storage which, although varied in its intensity since its establishment, has generally not altered the essential character of the neighborhood or negatively affected the public interest.
- The spirit of the Ordinance will be observed as the use supported by this Variance is permitted with the granted special exception.
- Substantial justice will be done as granting this request will not harm the public interest.
- Granting the Variance will cause no diminution in the value of surrounding properties as demonstrated by the increase in values over the time period in which the existing business has been in operation.
- This business is a reasonable use in this mixed use neighborhood where this type of activity or business is allowed (indoors) and a hardship would be created for the Applicants in not permitting its continuance.

 Mr. Parrott resumed his seat.

- 4) Case # 7-4
 Petitioner: High Liner Foods Inc.
 Property: 1 High Liner Avenue
 Assessor Plan 259, Lot 14

Zoning District: Industrial

Description: Expand existing seafood processing facility with two rear additions (4493 s.f.± and 3200 s.f.±).

Request: 1. A special exception under Section 10.440, Use 14.32 to allow the expansion of a seafood processing facility in the Industrial District.

SPEAKING IN FAVOR OF THE PETITION

Chairman Witham said it was the same application that came in a year ago, but it had lapsed because they hadn't been back for the one year renewal, which they had the right to request.

Mr. Maurice Boudreau, Director of Engineering for High Liner Foods said the Board already approved the application and there were no changes to the building, the plan to expand the office and maintenance area remained the same, and it was a permitted use.

Mr. Boudreau presented the following responses to the request:

- There would be no changes that would affect chemical storage or use of hazardous materials, so there would be no hazard to the public or adjacent properties from explosion.
- There would be no detriment to surrounding property values or change in the character of the neighborhood on account of location (smoke, gas or pollutants or outdoor storage)
- There would be no change in the appearance of the buildings. The side facing I-95 would be constructed with similar facing materials, and the contractor would fabricate matching panels on site.
- They would not be changing the volume of the processors, just creating more office and equipment storage space
- There would be no increases in production schedule so no impact or increase in those needs
- There would be no increase in traffic or creation of traffic safety hazards
- There would be no increase in the need for municipal services
- There would be no increase in storm water runoff onto adjacent properties or the street.

Mr. Rheume asked why they were not able to complete the project Mr. Boudreau said they were in an acquisition mode and a lot of activity and resources were used so they were not able to focus on completing this project.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Lemay said it would result in a 2% increase in the size of the building and there was plenty of room on the site.

Mr. Moretti added that there was no change from the past approval.

Action:

*Mr. Lemay moved to **grant** the petition as presented and advertised. Mr. Moretti seconded, and the motion passed unanimously with a vote of 7-0 for the following reasons:*

Review Criteria:

- This use meets the Ordinance standards provided for this particular use as permitted by special exception.
- With no change to the building or processes, there will be no hazard to the public or properties from fire explosion or release of toxic materials.
- There will be no detriment to property values or change in the essential characteristics of the area from smoke, dust, pollutants or unsightly outdoor storage. The only change to the outside Appearance will be replacing panels on the side facing I-95 with matching materials.
- The creation of maintenance and office space will not result in a traffic safety hazard or increase in traffic congestion.
- The process will remain the same with no increase in production schedules so that there will be no excessive demand on municipal services.
- The additions will be in an area of existing impervious surface so that there will be no increase in storm water runoff.

5) Case # 7-5

Petitioner: Robblee Family Trust, D. A. & L. A. Robblee, Trustees

Property: 2 Rand Court

Assessor Plan 221, Lot 89

Zoning District: Single Residence B

Description: Construction of a roof over existing deck. Allow existing deck.

Request: 1. A dimensional Variance from Section 10.521 to allow a front yard setback of 20'± where 30' is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Dexter Robblee said when he bought the house in 2000 it was two steps from being condemned. He said he systematically went through the house and improved it drastically over the last twelve years. He said the house was assessed at a \$150,000 when he bought it, and it is now assessed at \$450,000. He said it is the only house on Rand Court and no one sees it from South Street except for some of the abutting neighbors. He said he has a good rapport with his neighbors, and they have seen the improvements he has made to the house over the years. He said those houses have little to no setbacks with the distance from the street to houses being about 15 feet whereas his house has a 30 foot setback. He said adding a farmer's porch to the front would enhance the property and would cause no harm to anyone because it is out of view.

Mr. Robblee said the front door is due north and all the wind, rain, snow and ice comes down in sheets and his basement gets damp. He said a front porch would allow him to utilize a gutter system, and rain barrels to shed the runoff toward the front yard instead of into the foundation. He said he would also like to replace the shingles on the roof, and he would use lifetime architectural shingles on both the roof and the porch.

He said it was a hardship without a porch because they couldn't use the front door in inclement weather, and a porch roof would make it a lot safer with the roof and railings, especially in winter time. He said the backdoor was not as convenient as this door that is off the driveway.

Chairman Witham reminded the Board that not only were they granting a variance for a roof over the deck but also an after the fact variance for a deck built with a 20' setback. The aerial photo showed that there also was a landing with a 20' setback.

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

In response to questions from Vice-Chairman Parrott, Mr. Robblee stated that the width of the existing deck from front to back was 8 feet. He confirmed that there was no need to change anything on the deck other than adding a roof.

With no one further rising to speak, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Chairman Witham said there were other issues with the porch that needed to be resolved to bring it up to code, and he asked that the building permit for the porch roof include would like to see handrails or guardrails included. Mr. Robblee said the plan submitted had a handrail system that was up to code.

*Vice-Chairman Parrott made a motion to **grant** the petition as presented and advertised with the following stipulation:*

Stipulation:

1. That the existing deck and roof will be inspected by the Building Inspection Department to ensure that both are up to code.

While not a stipulation, the applicant was also requested to include in the building permit application the value of the new construction as well as the porch which previously did not have a permit, paying the appropriate fee for both.

Mr. Mulligan seconded, and the motion passed unanimously 7-0 for the following reasons:

Review Criteria:

- Located on a dead end street, there will be no public interest in denying this roofed deck.
- It is in the spirit of the Ordinance to allow homeowners to upgrade their property in a way that will make it more useful.
- In the substantial justice test, the benefit to the Applicant by granting the variance is not outweighed by any potential harm to the general public.
- With the attached stipulation, upgrading the property with a roofed deck in this location should increase the value of surrounding properties.

- The special conditions of the property are that the front setback predates the existing Zoning Ordinance and it sits at the terminus of a dead end street, orientated away from neighboring properties, so that the purpose and intent of a front setback is less critical. A farmer’s porch is a reasonable use in a residential district.

6) Case #7-6

Petitioner: Johanna Lyons

Property: 18 Cutts Street

Assessor Plan 209, Lot 14

Zoning District: General Residence A

Description: Rebuild porch roof.

Requests: 1. A dimensional Variance from Section 10.521 to allow a 5’± front yard setback where 15’ is the minimum required.

2. A dimensional Variance from Section 10.521 to allow a 0’± right side yard setback where 10’ is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Alex Kristoff, the contractor said they were granted a permit to rebuild the deck and as they were putting posts up they discovered the roof needed to be addressed because it was insufficiently framed and caused leaks to main roof. They were proposing to rebuild the flat roof with a slight change to the pitch and use regular shingles. He said by doing so they would and alleviate the hardship of a leaking roof, improve a safety issue, and help the look of house in the neighborhood.

Chairman Witham said the application was asking for a 5 foot front yard setback and the plan listed 8 feet; no setback at the right yard where the plan showed 18 feet; and 12 feet for the left yard. Mr. Kristoff said his figures were probably wrong. Mr. Cracknell said he looked at the application, and thought they may have confused the existing structure setbacks with the proposed structure. He said the applicant only needed the first request for a front yard setback of 5 feet where 15 feet is required, and the second request was not needed because the front porch was set back further from the property line than the principal structure that was not changing.

Vice-Chair Parrott asked for clarification that they were essentially replacing the porch at the same size as it was and Mr. Kristoff said that was correct. Vice-Chair Parrott asked if it was original to house. Mr. Kristoff said it looked like same period. Vice-Chair Parrott asked if he was going to rip it down and rebuild on the same footprint, and Mr. Kristoff said that was correct.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

*Mr. Rheaume made a motion to **grant** the petition as presented and advertised. Vice-Chair Parrott seconded, and the motion passed by a unanimous vote of 7-0 for the following reasons:*

Review Criteria:

- Replacing a roof over an existing porch will not be contrary to the public interest.
- The spirit of the Ordinance will be observed and justice served by replacing a feature of the home that is in keeping with neighboring properties with a safer, sounder structure.
- Replacing a deteriorated structure will, if anything, enhance the value of surrounding properties.
- There is no fair and substantial relationship between the purposes of the Ordinance provisions and their Application to this property as it is a reasonable request to rebuild a structure that was already in place with no detriment to neighboring properties.

III. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:40 p.m.

Respectfully submitted,

Jane K. Kendall, Acting Secretary