

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

March 18, 2014

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott;
Derek Durbin; Charles LeMay; David Rheame; Alternate: Patrick
Moretti

MEMBERS EXCUSED: Susan Chamberlin and Christopher Mulligan

Chairman Witham announced that two Board members had been excused and Mr. Moretti would assume a voting seat for the meeting. There would be six sitting members, and there were two cases where Board members would need to recuse themselves. He stated that applicants had the option to request a postponement if there were only five voting members and there were requests to postpone hearing the applications for 303 Islington Street and 159 Middle Street until the April meeting. He was waiting to hear if the applicant for 75 Albany Street would be presenting or not.

I. APPROVAL OF MINUTES

A) April 16, 2013

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes as presented.*

II. PUBLIC HEARINGS - OLD BUSINESS

A) Motion for Rehearing regarding 111 Maplewood Avenue.

Chairman Witham listed the petitioners requesting the rehearing. He advised that a rehearing could be granted if new information came forward that was not available to the applicant and or there had been a procedural error by the Board.

DECISION OF THE BOARD

*Mr. LeMay made a motion to **deny** the motion for rehearing and Vice-Chair Parrott seconded the motion.*

Mr. LeMay said he looked at the application and the response. He said he had heard all the presentations and testimony and he didn't see any new evidence or procedural errors. Vice-Chair Parrott concurred and added that the hearing was long and thorough. He said the Board understood that they were dealing with both a Zoning and an Overlay District and that there were

two sets of requirements. He said he thought the various aspects of the HDC criteria were considered and both sides had speakers who addressed the issues.

Chairman Witham said the submittal for rehearing stated several points why it should be heard, but they were similar to what had already been heard at the hearing.

The motion to deny the request for rehearing was passed by a unanimous vote of 6-0.

B) Case # 2-4

Petitioners: Kara Lynn Cole & Alistair James Ferguson Cole

Property: 40 Mill Pond Way

Assessor Plan 143, Lot 6

Zoning District: General Residence A

Description: Remove existing two story detached nonconforming structure and build an attached 20'± x 36'± two story garage, 11'± x 24'± connector, and 3'± x 9'± one story balcony

Requests: The Variances 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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) Building coverage of 30.9%± where 25% is the maximum allowed.
 - b) A left side yard setback of 6.5'± where 10' is required.
 - c) A rear yard setback of 18'± where 20' is required.

This request is revised from that presented at the February 25, 2014 meeting and postponed to the March meeting.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kara Cole did a quick summary of the proposal. She said she would not have requested a variance if her lot was not irregularly shaped and under the minimum size. She said concerns were raised by neighbors regarding an impact on their water views, and the height of the garage casting a shadow on their yards. She said she spoke with neighbors and redesigned their addition to make it more sympathetic to them. They pushed it back, but it made it wider and now they were asking for more variances.

Ms. Cole said she and her husband discussed renovating versus selling and buying another property and realtors validated that the addition would add a value of \$100-\$125K to the property so that would be a positive contribution to the neighborhood's value as well.

Ms. Cole pointed out that the scale of the tax maps was not accurate and made inquiries for a surveyor, but none was unavailable and it would add to their costs by \$1,400; therefore she said she used the markers that were already there. She said the current proposal would abide by the left side setback. She said she talked with neighbors about pushing it back to be in line with the porch, and one neighbor said they would like it back further, but they would lose green space if they did that and they would rather have more lawn than parking spaces.

Mr. Rheume said she indicated on her previous application that the existing garage was 6' from the side property line and the new application showed 6½', but it appeared closer to the property line on the illustration than the existing garage. Ms. Cole said she used a scale, but it did not match the lines and her drawings. She said she would not exceed the setback from where the current garage sat.

Ms. Cole showed photos of houses on Mill Pond Way that showed dual garages and said the style would be in keeping with the neighborhood. She also showed an aerial view of abutting properties. She showed a photo of her neighbors' views from 206 and 208 Dennett Street. She said she knew views were not protected, but she was trying her best to protect the abutter's view. Ms. Cole said she believed there would be a better view of the water because the garage would no longer be there. Ms. Cole reviewed the estimated heights of the existing structures and the proposal. She displayed a photo of the shadows at 7 a.m. and said the shadow would cast against the neighbor's garage, not their house.

Ms. Cole submitted six signatures from neighbors supporting the petition and three verbal approvals from others.

Mr. Rheume said the proposal indicated the garage would be the same height as the house, but it appeared taller in the renderings. Ms. Cole confirmed that it would be the same.

Vice-Chair Parrott asked for clarification on the dimensions and setbacks on the plan and Ms. Cole said it would be 30' x 25'. Vice-Chair Parrott commented that the whole plan appeared to have discrepancies. Ms. Cole explained that one set of dimensions were for the garage and the other set included the connector.

Mr. LeMay noted that the ridgeline of the garage in the photos appeared higher than the house by a substantial amount and the roof pitch of the garage also appeared wider than the house. Ms. Cole said it was just the way it was drawn out on the computer, but she guaranteed that it would not be higher.

Mr. Neil Snow of 45 Mill Pond Way stated that he had no issue with the renovations and felt it raised the value of homes in the neighborhood. He was in favor of replacing the barn.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Petra Huda of 208 Dennett Street requested clarifications on the Staff Report. She said page 2 of the aerial map was not up to date and the "L" shape building at 208 Dennett Street was actually changed to a square shaped building in 2007.

Ms. Huda said the last sentence on page 3 claimed that the applicant had met with the abutters to hear their concerns, but she did not think a brief conversation while going out the door at the last meeting met that description. She said she met with them the next day and expressed concern that the water views from Dennett Street would be blocked. She said she later saw plans that showed a balcony to give the applicants the view that she currently enjoyed. Ms. Huda added that the application filed on March 12 indicated Ms. Cole was filing for one setback, but there were actually three.

Ms. Huda said the garage and second story would be contrary to public interest because it created shadows, blocked air, light and the water front view of North Mill Pond from 208 Dennett Street and diminished the value of the property as expressed by Mr. Kurt Shea of Keller Williams Realty. She said granting the variances would not be in the spirit of the Ordinance as the garage and full second-story addition was not consistent with the other single-family structures along this section of Mill Pond Way.

Ms. Huda said the Coles had not presented any documents of the current garage from a structural engineer to show that it was structurally unsound to support that substantial justice would be served by granting the variance.

Ms. Huda said the application of March 12, 2014 stated that there would be an increase of 10' between the new structure and the neighbor's garage, but it was now 6½', which would be closer so the statement that granting would not diminish the values of surrounding properties was no longer applicable according to the new application.

Ms. Huda said there was no unnecessary hardship for the Coles, but instead a hardship would result from the proposed garage obscuring the view from 206 and 208 Dennett Street. Ms. Huda displayed a photo view at 17' from the second story window of 208 Dennett Street that would be obscured by a garage built at 28'5".

Ms. Huda said the entire proposal was based on property sketches from tax maps, without a professional surveyor. She said it was stated on the site map submitted that the lot and the existing structures were not scaled correctly and she asked how they could know what they were proposing to build without accurate maps.

Ms. Huda said it was also stated there were no windows that would invade the privacy of the neighbors, but the drawing showed three windows that would look down on 206 and 208 Dennett Street.

Mr. Rheume asked Ms. Huda if there were two separate units at her property and Ms. Huda said there were, hers and her neighbor, Ms. Grace Duke's unit. Mr. Rheume asked for clarification on the garages. Ms. Huda said the first garage was hers, and the second dimension was the current height at the 40 Mill Pond property. She said their proposal was 6' longer than the end of her roofline, which would obstruct her view.

Ms. Grace Duke of 206 Dennett Street said she lived in a condominium and she was concerned if her neighbor's property values were diminished because they were identical.

Ms. Kimberly Schroeder of 208 Dennett said she also opposed the proposal.

Mr. George Dempsey of 42 Dennett Street said he reviewed the drawings and site plan and did not know how the Board could make a legitimate decision because he could not read the measurements using tax maps. He said the applicants had appeared before and there was no excuse for not getting a surveyor. He felt the information was inaccurate and incomplete and that the proposal would be out of character with the neighborhood.

SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham commented that there were many two-car garages in the area, but none with a full second story. He said part of the criteria for granting was whether there was a reasonably feasible alternative. He said when he looked at the floor plans and space to see what was available to give up 3½' of width to meet the side yard setback, he found one of the bedrooms on the second floor appeared to be 29' wide, along with another wide bedroom and generously sized bathroom. He said it seemed like a reworking of the floor plan, sacrificing three feet. He also suggested that the secondary entrance could be combined onto the new front porch on the first floor.

Chairman Witham stated that although there was a garage of a certain height there now, once something was torn down, it should work toward meeting the height requirements. He noted that the lot coverage, size and shape of the proposal seemed reasonable, and understood that some relief would be needed, but was not completely on board with the request for the side yard setback.

Mr. LeMay said it was not unreasonable to have an addition with a garage, but the tax map and elevation issues made it difficult to reach a decision based on the presented information.

Mr. Rheume said he was concerned as well with the revised plans. He said he understood the difficulty of obtaining surveys in Portsmouth, but it behooved people to come back with detailed surveys to accurately inform the Board regarding proposals with complicated lots that encroached on neighboring properties. Mr. Rheume said what was being proposed was probably not enough to satisfy all the criteria at this point in time.

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

Mr. Rheume said the application would need to meet all the criteria to be passed or not meet one or more to be denied. In regard to meeting the spirit of the Ordinance, he said they were looking to increase from the 23% coverage up to 30% from the allowed 25%. He said the Board had some sympathy for some of the lot line setbacks, however the one encroaching toward the neighbors on Dennett street was beyond what the Ordinance was trying to do to keep light and air open relative to other properties and some natural order and distance between properties in this zoning area.

Mr. Rheume said the second criteria that was not met was the hardship test, which was the toughest to meet and they had to balance the desire by the homeowners to maximize what they wanted against the needs of surrounding properties and the City as a whole. He said the balance in the substantial justice test tipped more toward the general public interest versus the advantage to the homeowner in fully using their property.

Vice-Chair Parrott agreed and said there was a case for a survey that would be a small percentage of an extensive renovation like this and would be in everyone's interest, particularly when houses were so close. He said the design was fine in concept, but was not consistent with the public

interest or the spirit of the Ordinance in its present configuration, but a redesign could make the project better for the homeowners and the neighbors.

Chairman Witham advised the applicant that the design was closer to what needed to be done. He said it was a large addition and the size and setback were sensitive.

The motion to deny the request was passed by a vote of 6-0.

III. PUBLIC HEARINGS – NEW BUSINESS

Chairman Witham asked if the applicant for 75 Albany Street was present. Mr. Andrew Ward, the realtor with Colliers International, stated that he was representing the applicant. Chairman Witham informed him that they would be down to five voting members and they were eligible to request to postpone on that basis. Mr. Ward said he spoke with the applicant’s attorney and they could not reach the applicant so they were still waiting to present their request.

1) Case # 3-1

Petitioner: Kathleen E. Calkins Trust, Kathleen E. Calkins, Trustee

Property: 206 Elwyn Avenue

Assessor Plan 112, Lot 27

Zoning District: General Residence A

Description: Replace existing 178± s.f. rear addition with a 368± s.f. one-story addition.

Requests: The Variances 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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow building coverage of 31%± where 27%± exists and 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kathy Calkins said she grew up in Portsmouth and her husband grew up in Newcastle. They both moved away to Massachusetts and then purchased a house in 1995, which they rented out until they moved back in 2005.

Ms. Calkins said that the only drawback to their house was they did not have a bathroom on the first floor, which was a drawback for them as they got older and had older visitors. She said they were proposing to take off the old porch in the back that did not have a foundation, and add a room and a three-quarter bathroom. She said her contractor, Mr. Gordon Murray was present for technical questions.

Mr. Rheume said the Board typically received a floor plan to show what the addition would contain. Mr. Murray said there would be a sunroom and a bathroom. Mr. Rheume said the application indicated the addition would be for 368-s.f. total addition, including 295 s.f. and a side porch and a “dog house”. Mr. Murray said the doghouse was what the architect called the

bulkhead entrance. Mr. Rheume asked where the side porch would be. Mr. Murray said there was a set of steps and an entry there currently that would be replaced.

Mr. LeMay asked if there was a roof over the sun porch and Mr. Murray said there would be.

Vice-Chair Parrott said the information was sketchy. He asked if it entailed a complete removal of the existing structure. Mr. Murray said it did. Vice-Chair Parrott asked if the width across the back of the house would be the same as it was currently and Mr. Murray said it would be. Vice-Chair Parrott asked for the dimensions and Mr. Murray said it would be 19' x 15½' and 12' high to the ridge, which was 6" higher than the existing structure. He said the back porch currently came out 8' into the backyard and it would come out an additional 8' with the addition.

Mr. Rheume said the plan view showed dimensions of 11' to the existing sideline, but the new addition continued to the property line. He asked if the extreme end of the new addition was 10' or greater to the property line and Mr. Murray said it was.

Mr. Alan Lincoln of 224 Elwyn said he supported the request. He said there was a sizable backyard and it was a small change in lot coverage from the small addition that would be hardly noticeable and would allow the applicants to remain in their home as they aged.

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 made a motion to **grant** the petition as presented and advertised and Mr. Durbin seconded the motion.*

Mr. LeMay reviewed the criteria, noting that the proposal was for a small increase with no impact to the abutters or the City and it would cure a functional obsolescence in the property given its age. He said it fit in with the lot and did not change the character of the neighborhood. He said it was not contrary to the public interest and observed the spirit of the Ordinance. He said the variance was only for a small percentage of additional lot coverage, while meeting sideline setbacks. He said substantial justice would be done by allowing the house to be used in a more up-to-date way. He said it did not encroach on light and air and would not diminish the values of surrounding properties. He said the strict application of the Ordinance provision would cause a substantial hardship for this applicant.

Mr. Durbin said it was a straightforward and a reasonable request. He said the only difficulty he had was with the hardship test, which was usually something inherent in the land. He said in this case there was a nonconforming structure that already existed on a long, narrow lot. He said aside from that they could consider making improvements to a property to make it handicapped accessible and for those reasons the applicant had met that test.

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

- 2) Case # 3-2
Petitioners: DEH Ventures LLC, owner, CHI Engineering, applicant
Property: 430 West Road
Assessor Plan 267, Lot 28
Zoning District: Gateway
Description: Install two roofed heating/ air conditioning units on 12'± x 6'± pads. Add 21 off-street parking spaces in front of the building.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. Variances from Section 10.531 to allow the following:
 - a) A front yard parking setback of 27.6'± where 30' is required.
 - b) A right side yard setback of 12.5'± where 30' is required.
 2. A Variance from Section 10.1112.50 to allow 127 off-street parking spaces where a maximum of 77 spaces is allowed.
 3. A Variance from Section 10.1113.20 to allow off-street parking to be located in the front yard or between the principal building and a street.

SPEAKING IN FAVOR OF THE PETITION

Mr. Mark Hayden, General Manager for CHI Engineering Company stated that he was representing the principal owners of DEH Ventures. He said they were growing and needed more space so they met with the Inspection Department and they were granted a permit to build within the building, which was now complete. He said they did not realize until they got into the nitty-gritty that they needed a place to put the air handlers for the heating cooling units. He said they had a sloped roof and the weight load was too much for the current roof so they considered putting it inside, but after discussions with the Planning Department they determined that it would be reasonable to put them on the west side, though it would require a variance with that option. He said they would be willing to give up parking spaces at the back that were approved in 2004. Chairman Witham said they rarely had someone willing to take parking away to meet the requirements.

Mr. Rheume asked if the intent was to leave the gravel area and Mr. Hayden said they would leave it or revert it back if they had to. Mr. Rheume said his understanding of the Ordinance for open space was to avoid seas of asphalt where they were not needed, but the other purpose of the Ordinance was to encourage lawn areas and tree lines. He asked how they felt about turning it over to green space or allowing it to go back to a natural state. Mr. Hayden said people had been using the area for parking because they were cramped for space, but they would gladly turn it back to a natural space if they could obtain more parking space at the front. Mr. Hayden said he would then need to go back to the Planning Board with the proposal, however.

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

Chairman Witham commented that the requirement for not allowing parking between the front of the building and the street was part of the Gateway District and the development of a certain streetscape along Route 1. He said he did not think it was specifically geared around West Road and the industrial park with buildings that already existed. He said it made sense with the development at the former Yoken's lot, but the lot between this area and Route 1 was narrow and he felt the district grabbed this area by default.

Mr. Rheume asked to discuss whether the gravel area behind the building should remain or if something different should be done. Mr. LeMay said he liked the idea of trading off green space for green space, but he did not feel it was necessary to go into an enormous renovation of the gravel area since it served a purpose. He said giving up some of those spaces was more of a shift than an addition of spaces. Chairman Witham asked if he was comfortable with gravel or the green space and Mr. LeMay said grass and an employee picnic table would be nice, but he would also be fine with gravel. Chairman Witham said it would also go before site plan review and they could make a comment for site plan review rather than a stipulation.

*Mr. Rheume made a motion to **grant** the petition as presented and advertised with the exception that Variance #2 would not be needed as long as the applicant moved the identified parking spaces from the rear of the property to the front. Vice Chair Parrott seconded the motion.*

Mr. Rheume said moving the parking to the front was a more logical location to support employees entering the premises. He said there was already some existing parking at the front of the building so adding more between it and West Road was less of a concern than it might be if this was a brand new lot that was being put in the front of the building. He agreed with Chairman Witham that the restrictions in regard to the parking in the front of a building was for aesthetics along out the Gateway corridor and a exceptions had been granted because it was difficult in practice to fully adhere to every aspect of that requirement.

Mr. Rheume said the other issue would be the encroachment of the proposed a/c units on the side property line. He said the right side yard setback was for 12.5' where 30' is required, which was about half of what was normally called for, but this was a unique situation where they were abutting a large property. He said it was not like the south end where some applications were right up to other people's homes. He said there was nothing there than a road with a lot of country property so he didn't see a lot of negative impact to anyone living on that side, which made the application more palatable in terms of meeting the spirit of the Ordinance.

Mr. Rheume said granting the variance would not be contrary to the public interest because there was less of a concern to maintain a Gateway corridor appearance that was free of cars in front of the buildings and so granting the variance would observe the spirit of the Ordinance in this case. He said granting the variance would do substantial justice by allowing the applicant to make more logical use of their property by placing additional parking in front for the benefit of their employees. He said their expanding company was a positive thing for the community and air conditioning was generally expected for office space, but as the applicant indicated, they had some hardship in terms of placement. He said perhaps better planning would have given them an opportunity to place it on the roof, but there were also disadvantages as any sound generated would cast at a greater distance than it would on the ground. He said even though it was close to a property line, it would be more hidden by building and trees.

Mr. Rheume said granting the variance would not diminish the value of surrounding properties in an industrial area. It would not be out of character with other properties in the area and if anything would increase the surrounding values. He said the special conditions that created a hardship were that the building was set up fairly close to a property line. There was also a unique hardship where the structure of their building did not allow them to place the a/c on top of the building. He said the siting of the building on the lot and the desire to move parking to the front was also a unique circumstance that created a hardship. He concluded by saying there was no fair and substantial relationship between the general provisions of the Ordinance and the application to the property so the proposed use was a reasonable one.

Vice-Chair Parrott concurred with Mr. Rheume’s statements and added that there were a lot of good reasons that the parking be restricted between a principal building and the road, but in this case it was logical to waive that requirement because West Road was lightly travelled. He said this property was tucked away from Lafayette Road, was buffered by a building in front and abutted a seasonal parking lot in the back. He said there was quite a bit of vegetation in front and back and there were no houses anywhere near. He added that it there were not a lot of places for the equipment and it would be in the public interest by taking away parking at the back to gain open space.

Mr. Rheume said it was not a stipulation that the back area be converted back to green space, but he encouraged the applicant to consider it when they moved this forward to the Planning Board for approval.

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

Chairman Witham asked the attorney for 75 Albany Street if they wanted to be heard at the end of the meeting and they indicated they did.

3) Case # 3-3

Petitioners: Donovan-Hess Family Revocable Trust, Jane M. Donovan & William Hess, Trustees

Property: 54 Rogers Street

Assessor Plan 116, Lot 44

Zoning District: Mixed Residential Office

Description: Install 12’6” x 8’6” shed in the left rear yard.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 & 10.572 to allow a 1’7”± left side yard where 10’ is the minimum required for an accessory structure.
2. A Variance from Section 10.521 & 10.573.20 to allow a 1’8” ± rear yard setback where 10’ is required for an accessory structure.
2. A Variance from Section 10.521 to allow building coverage of 55.4%± where 50.7%± exists and 40% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Bill Hess of 54 Rogers Street said he submitted an application a couple of years ago, but did not add the shed, and was now resubmitting a request for a shed. He said the new proposal was smaller and turned 90 degrees, but had the same setbacks as previously requested. Chairman

Witham asked if the previous application for an addition went through a variance process that included the shed. Mr. Hess said it had and they only removed the garage that was 12' x 20'. Chairman Witham asked if the shed was generally within the same footprint as the garage and Mr. Hess said that was correct.

Mr. Rheume said that in 2008 there was talk of granting variances for an addition that would have resulted in a lot coverage of 46% and he wondered if that was never fully carried out. Ms. Walker said she was not sure of the answer, but it may have been in relation to a dispute with the School Department over the lot line and easement and it was resolved before the application was submitted. Mr. Rheume said he wanted to be sure that 42% was now the correct number and Ms. Walker stated it was.

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

Mr. Moretti said the application was more or less to replace a previously existing shed with very little change in lot or building coverage. He went on to review the criteria, saying he did not see anything that would change the public interest with such a small adjustment. He said the request by the applicant to make an adjustment was in the spirit of the Ordinance and he believed substantial justice would be done by allowing the applicant to enjoy their property. He said the values of surrounding properties would not be diminished because the shed would improve the property. He said the unnecessary hardship was that the applicant needed storage and the shed would allow that.

Mr. Durbin concurred with Mr. Moretti's comments.

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

- 5) Case # 3-5
 - Petitioners: Christoph Wienands & April Guille
 - Property: 307 Wibird Street
 - Assessor Plan 132, Lot 12
 - Zoning District: General Residence A
 - Description: Construct a 26'± x 26'± two-story rear addition
 - Requests: The Variances 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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
 2. Variances from Section 10.521 to allow the following:

- a) A left side yard of 9'5" ± where 10' is the minimum required.
- b) Building coverage of 26.3%± where 18.1%± exists and 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Amy Denton, the designer and Mr. Chris Wienands, the owner, appeared before the Board. Ms. Denton said the applicant was seeking approval for an addition and renovation to accommodate a growing family in their modest size house. Ms. Denton explained that they would renovate the existing addition that was 9'5" from the property line with a family room, mudroom, laundry and kitchen. She said there would be a master bedroom suite with a home office and a relocated bathroom on the second floor. She said the existing bump out was in need of repair with freezing pipes.

Ms. Denton addressed the criteria for granting the variance, saying it would not be contrary to the public interest. She said it would be in keeping with the neighborhood, which was mostly New Englanders with small additions. She said the owners put in a great deal of sweat equity removing mold over a period of five years and they wanted to complete their renovations to make the house safe for their family. She said substantial justice would be done and it would protect the public interest with improvements that would resolve harmful issues in house. She said both neighbors to the right and left had already done significant projects so these improvements would contribute to the values of surrounding properties. She said they moved the second floor back from the right property line so they would not block that neighbor's air or light. She said it would be hard to see the addition for the property on the left side. Ms. Denton said literal enforcement would result in a hardship because the applicants have spent substantial time and expense on the house. She said they were trying to create a comfortable home that suited their needs without over designing or over extending the footprint. She said the lot was already non-conforming and the side setback was also non-conforming. She said the plumbing and electrical systems needed upgrading, but they were trying not to incur any unnecessary costs.

Mr. Wienands said they were trying to avoid a long, straight, 50' wall that would not fit in with the neighborhood. He said they were letting in more light by setting the second story back. He said the family room was central to the project, but they narrowed down the space as much as possible. He said they wanted to continue the wall of the existing addition, which was tied into space that was already renovated and if they had to remove that by half a foot, they would have to remove recent work including doors.

Chairman Witham asked for clarification on how far out they were asking to go where 10' was required. Ms. Denton said they would go out 11' feet. Mr. Wienands showed a photo display of where the changes would occur.

Mr. Rheaume said there might be justification for the side setback building off the existing foundation, but the lot coverage was 26.3% and he asked if they could live with less and if not, what wouldn't work if they lost 1.3%. Mr. Wienands said 1.3% would be 100 s.f. and they would have to cut down 10% of the first floor, losing a utility room, and a mudroom, or cut the family room by half, which would be a significant loss from what they were envisioning. He said considering the lot size was 1.5 acres, it was already designed within inches. Ms. Denton said they were designing and running numbers between what the town had and what the neighbor's

survey had. She said they were trying to cut costs of a surveyor and they were within inches. Mr. Rheume asked if they knew if the front steps were included. Ms. Denton said they were.

Vice-Chair Parrott said the site plan did not have the dimensions of the lot and asked what the width was. Ms. Denton said it was a neighbor's site plan, which was different from what the town had. Mr. Wienands said it was 45' at the front, and 46' at the back. Ms. Denton said it was 46.5' at the side and 48' on the other. Ms. Walker said that was what the Planning Department had. Vice-Chair Parrott said he was trying to add up the setbacks on the additions and they were not coming out on the width. He asked if she was sure where the sidelines were. Mr. Wienands said one set of dimensions came off the neighbor's survey and the other came off the town's tax map, but the side setback seemed consistent.

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 and Vice-Chair Parrott seconded the motion.*

Mr. Rheume said it was a good-sized addition, but it was a reasonable because most of the proposal was in full compliance with the Zoning Ordinance and within the property owners' rights and the exceptions were relatively small.

Mr. Rheume reviewed the criteria, saying that granting the variance would not be contrary to the public interest because it was within a neighborhood that had quite a few similar homes that had additions in similar size and scale. He said an addition in the back of the house would be in keeping with a 1905 style of house. He said the spirit of the Ordinance would be observed as they were only asking for minor relief for a side yard setback, which was small relative to what was there. He said shrinking the addition down would have an impact to the look and usefulness of the addition.

Mr. Rheume said substantial justice would be done by taking the opportunity to make an expansion on an odd-shaped house. He said the layout made the house more compatible in this century than when it was built. He said the values of surrounding properties would not be diminished because they were increasing the value of this property and there would be a trickle down effect to neighboring properties. He said there were already homes that extended back on their lots and so this addition would not dwarf the adjacent structures.

Mr. Rheume said the literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because the property was situated on a hill that created a special condition and the front stairway was therefore necessary. He said the side setback made logical sense to utilize the existing foundation space. He said there was nothing in the public interest that would out way granting the application

Vice-Chair Parrott concurred with Mr. Rheaume’s comments that it satisfied all the criteria. He added that the addition was well designed and the relief was small so there was no detrimental effect to the neighbors.

The motion passed by a vote of 6-0.

4) Case # 3-4

Petitioner: 303 Islington Street LLC
Property: 303 Islington Street
Assessor Plan 144, Lot 11
Zoning District: General Residence C

Description: Convert three office use units to dwelling units with an increase in required off-street parking spaces.

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 #1.52 to allow conversion of a building existing on January 1, 1980 to four dwelling units with less than the required minimum lot area per dwelling unit.
2. A Variance from Section 10.1111.10 and 10.1112.30 to permit a change of use that provides 8 off-street parking spaces where 12 are required.
3. A Variance from Section 10.1114 to allow off-street parking spaces and access ways that do not comply with the off-street parking dimensional requirements.

DECISION OF THE BOARD

Chairman Witham announced that voting on this item was being taken out of order and there was a request to postpone because there were only five voting members.

Vice-Chair Parrott moved to postpone the petition to the April 2014 meeting. Mr. LeMay seconded, and the motion passed 5-0 with Mr. Rheaume recusing himself.

6) Case # 3-6

Petitioner: PF Jax Real Estate, LLC, owner, Bryan Pappas, applicant
Property: 159 Middle Street
Assessor Plan 127, Lot 4
Zoning District: Mixed Residential Office

Description: Install a 2’ x 5’ free-standing sign.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1253.40, to allow a front setback of 1’6” ± where 5’ is required.
2. A Variance from Section 10.1253.30 to allow a sign height of 10’± where 7’ is the maximum allowed.

DECISION OF THE BOARD

Chairman Witham noted that there had been a request to postpone the petition to the April, 2014 meeting due to five voting members.

*Vice-Chair Parrott moved to **postpone** the petition to the April, 2014 meeting. Mr. Rheume seconded, and the motion **passed** with Mr. Durbin recusing himself.*

7) Case # 3-7

Petitioners: Peter & Lee D. Vandermark

Property: 86 Ridges Court

Assessor Plan 207, Lot 62

Zoning District: Single Residence B

Description: Raise height of existing left side shed roof.

Requests: The Variances 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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard setback of 5.25'± where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Matt Bano, the designer representing the owners who were out of town, appeared before the Board. He said the owners wanted to raise their roof. He said the style would remain the same. Chairman Witham asked how much higher the roof would be and Mr. Bano said it would be approximately 3' at the high point.

Mr. Bano reviewed the criteria, stating that granting the variance would not be contrary to the public interest and would not alter the essential character of the neighborhood nor threaten public health or safety. He said the spirit of the Ordinance would be observed in that the proposed expansion was minimal. He said it would not alter the basis structure of this lawful use. He said substantial justice would be done and the benefit to the owner would have no impact on general public. He said the proposal should not affect the value of abutting properties. He said there was only one abutter from whom they received an email of support.

Mr. Bano concluded by saying there was a hardship as a result of the configuration of space with a sunken living room with two risers going down. He said the homeowner had resided there for twenty years and they wanted to bring the living room up one level because of tripping incidents. He said the change would bring no harm to any abutters.

Mr. Rheume asked if the existing deck would be removed and not replaced. Mr. Bano said that was correct.

Mr. LeMay asked if the proposed roof would improve the encroachment of the existing overhang. Mr. Bano 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

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

Vice-Chair Parrott stated that this was a simple request that would improve the non-conformance a bit. He said it would not be contrary to the public interest, as it would improve the usefulness of the house for the owners. He said granting the variance would observe the spirit of the Ordinance by allowing the homeowners full use of their home. He said substantial justice would be done because there was no over riding public interest in denying the petition. He said it would not diminish the value of surrounding properties. He said there was a hardship because the design was odd and inherent in the building and the change would make it more user friendly. He said the non-conformance would be slightly reduced it was in the public interest.

Mr. LeMay agreed with Vice-Chair Parrott’s review and had nothing further to add.

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

8) Case # 3-8

Petitioner: Hunking Holdings LLC

Property: 311 Marcy Street

Assessor Plan 102, Lot 2

Zoning District: General Residence B

Description: Add 8’± x 12’± one-story rear addition.

Requests: The Variances 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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) A left side yard setback of 2.3’± where 10’ is required.
 - b) A rear yard setback of 3’± where 25’ is required.

SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney, architect, representing the owners who were out of town, submitted an email with a list of abutters to the property that had no objections to the proposal along with a tax map for their locations. Ms. Whitney said the site plan and photos showed a small lot and structure that she referred to as American Gothic or Craftsman style. She said the address was on Marcy Street, but the front door was on Pickering Street. She said they would ask for setback variances either way because the property was within a foot to the left side property line.

Ms. Whitney said they were proposing to replace a 6’ x 7’ deck with an 8’ x 12’ addition that would improve the setback from one foot to 2.3’ from the rear property line. She said the addition would allow a second egress entrance and expand the kitchen to make more room for a closet and table. She said they would put in a foundation to eliminate the crawl space into the dry basement and build a bulkhead. She said the addition would be connected to the existing residence.

Ms. Whitney said a survey had been done and she located the pins and did measurements from the existing building to the street and curb cut. She said the existing residence was 3' from the setback, which was not uncommon in the neighborhood. She said old maps showed there was a former addition in the same location 50 or more years ago that had been removed. She said they would still be under 1,200 square feet of living space even with the addition. She said the 6.5' rear setback would allow access to the back corner of the lot, adding that there was a big front yard, but it was a classic period house in the Historic district and a front addition would alter character and it would eliminate parking spaces.

Ms. Whitney said the variance would not be contrary to the public interest and there was widespread neighborhood support. She said there would be minimal impact on street views. She said the special condition was that the building was sitting on the left side property line and tight to rear line. She said it would be in the spirit of the Ordinance and it was not unusual for buildings in this area to be tight to their property lines. She said there was an offset to this property with the big front lawn so they would not be filling the entire lot. She said substantial justice would be done and minimal relief was being requested that would improve the livability of the property. She said the surrounding property values would not be diminished and reiterated that there was broad neighborhood support. Ms. Whitney said she would still have to go before the Historic District Commission for final approval.

Mr. Jerry Eckman said he lived across the street at 326 Marcy Street and thought the proposal would improve the property, the street and the neighborhood. He said he thought it met the criteria, would be a tremendous addition and should be granted.

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 and Mr. Durbin seconded the motion.*

Mr. Rheume said it was a small house and any additional living space would be an asset. He said a couple of shed dormers had been proposed, but the HDC would decide if the dormers would be better than gables. He said at first blush there was 3' on the allowable setback where 20' required. He said the 3' was to the bulkhead, but in terms of light and air, the addition was actually 6.5' and more representative. Mr. Rheume compared the differences between the setbacks for this lot in General Residence B District, which was similar to the GBA, but for smaller lots and noted some inconsistencies that he suggested the Planning Department review. He said the neighbor's survey was helpful because the tax map indicated that they owned the neighbor's garage, which the survey indicated was not true.

Mr. Rheume reviewed the criteria for granting the variance, stating that it would not be contrary to the public interest because there was widespread approval from the neighbors. He said the modest one story addition was in keeping with the small homes with small additions in the area. He said it was unique from an architectural standpoint and the HDC would address that. He said it

seemed like a lot of relief, but it was typical for the conditions in the neighborhood with houses that were close together and it would observe the spirit of the Ordinance. He said substantial justice would be done by allowing a modest increase as the architect indicated, along with the bonus of a bulkhead to take full advantage of the space. He said the values of surrounding properties would not be diminished because it was a substantial improvement to the home with abutter approvals that indicated it would also improve their property values. He said literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because of the small lot and the location of the residence on the lot that gave the structure some unique characteristics so that there would be no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to this property.

Mr. Durbin added that it was a modest addition that would improve the functionality and access to the property. He said the rear setback had no place to go from a design perspective to accomplish the goals intended.

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

Mr. Moretti recused himself from this petition.

9) Case # 3-9

Petitioner: Robert A. Ricci Sr. Revocable Trust 9, Robert A. Ricci Sr., Trustee, owner,
Robert A. Ricci, Jr., applicant

Property: 75 Albany Street
Assessor Plan 156, Lot 26

Zoning District: Mixed Residential Business

Description: Allow a furniture store in an existing building.

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 #8.31 to allow retail sales, not marine-related, to be conducted within a building.

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin appeared before the Board on behalf of the Robert Ricci Trust that was seeking a special exception on their property currently occupied by the Portsmouth Music Center near Brewery Lane. He said the Music Center would be moving and a furniture store that presently operates across the street was proposing to move in. He said the furniture store currently had no parking and used the parking on the Ricci lot.

Attorney Loughlin said the building was built in 1950 by Bob Ricci’s father. He provided a history of uses on the property and said the present use was busy and generated traffic. He said there was currently 4,000 square feet of parking with eight parking spaces on site. He said the requirement for furniture retail was one space for every 600 square feet.

Attorney Loughlin said it fit under the category of non-marine retail sales and allowed by Special Exception. He said the conditions for granting the Special Exception were that there would be no visible changes to the building or lot, except for a sign. He said the only changes would be to the

inside of the building and from the current use to a less intensive use. He said it met the standards of the Ordinance. There would be no hazards to the public or adjacent properties as a result of fire, explosion or toxic materials. There would be no detriment to the property owners in the vicinity or change to the essential character of area. He said there would be no problems because of smoke, dust or other pollutants and no creation of traffic or safety hazards. He said there would be no increase in demands on municipal services.

Mr. Rheume asked if the property at 69 Albany Street was also owned by the Ricci's and Attorney Loughlin said it was. Mr. Rheume noted that the lot was an odd shape, and asked if the lot was separated from properties on Cass Street. Attorney Loughlin said that was correct.

SPEAKING IN OPPOSITION TO THE PETITION

Chairman Witham said there was one letter of opposition from Mr. and Mrs. Miller of 74 Cass Street in regard to the fence and a property line dispute.

SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Vice-Chair Parrott said the request was strictly for use without any variance requests for setbacks. He said it was a mixed-use area, with more commercial use than residential and had been that way for a long time.

Vice-Chair Parrott went on to say the Special Exception use was allowed provided it did not have a questionable impact on the neighborhood. He said it met the standards as provided by Special Exception because it was retail. He said there would be no hazards from fire, explosion or toxic materials that were usually limited to industrial manufacturing, construction or repair. He said there would be no detriment to the surrounding property values or the essential character of the neighboring area on account of the size, scale or location of the building in respect to parking, dust, heat, noise, odors, smoke or vibration. He said there would be no creation of or increase in traffic congestion or hazards in the vicinity. He said it was not a high traffic area and furniture stores did not generate a lot of traffic. He added that there would be no excessive demands on municipal services including water, waste disposal, sewer, police and fire protection or schools. He said it was hard to see any impact to those factors with this use. Lastly he said there would be no increase in storm water runoff as there would be no changes to the exterior.

Mr. Durbin concurred and incorporated Vice-Chair Parrott's comments.

Mr. Rheume said he supported the motion, but had forgottent to ask if the proposed eight parking spaces would be striped off. He said his only concern was with traffic congestion. He said he hoped they would straighten out the parking spaces, particularly spot #8, which was in an illogical location. Chairman Witham asked if he wanted to make a stipulation. Mr. Rheume said he would

leave it to the maker of the motion. Vice-Chair Parrott said he did not feel strongly that it needed a stipulation.

*The motion **passed** by a vote of 5-0..*

IV. OTHER BUSINESS

Proposed Revisions to Board of Adjustment Application Form and Rules and Regulations.

Chairman Witham opened up discussion in reference to Ms. Walker's comments.

Vice-Chair Parrott recommended a clearer definition of what the Board's section in the annual report contained. Ms. Walker said the Planning Department gave a summary in the annual report, but they never reviewed it with the Board. Vice-Chair Parrott suggested that they do so.

Vice-Chair Parrott pointed out that computer-generated renderings listed under the minimum requirements on the second page of the application did not lend themselves well to dimensions. Chairman Witham said they could be helpful when done right, but they often needed supporting documentation. Mr. Rheume said they could be helpful as a compliment to a set of drawings, but not in lieu of.

Mr. Rheume wondered if there might be additional guidance in the use of tax maps versus surveys. Mr. Durbin said there was case law on the tax map issue and suggested that the Legal Department provide a review. He said in the absence of surveys, applicants have used tax maps and they have been upheld, but some have also been challenged. Mr. Rheume said he understood the Planning Department using tax maps that were readily available if there were no surveys, but there had been an example in the Marcy Street case where there was a major discrepancy. Ms. Walker said the Planning Department made that recommendation, but she was not sure they could require it. Chairman Witham said there were some situations where a tax map sufficed and others where it did not. Mr. LeMay said applicants would be using tax maps at their own peril.

A brief discussion ensued regarding explanations on Fisher vs. Dover. Mr. LeMay agreed with Ms. Walker's suggestion of changing the wording to "interested parties" that would include both the petitioner and the party defending themselves. Mr. Rheume said he would like to include guidelines on Fisher vs. Dover that the applicant would review.

VI. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:22 p.m.

Respectfully submitted,

Jane K. Kendall
Acting Secretary