

**MINUTES OF THE WORK SESSION AND
MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

**MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
SCHOOL BOARD CONFERENCE ROOM
and
EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**June 17, 2014
Work Session
Regular Meeting**

6:30 p.m.

7:00 p.m.

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott; Susan Chamberlin; Charles LeMay; Christopher Mulligan; David Rheame; Alternate: Patrick Moretti

MEMBERS EXCUSED: Derek Durbin

ALSO PRESENT: Juliet Walker, Planning Department

WIRELESS TELECOMMUNICATIONS APPLICATION WORK SESSION

A work session to discuss procedures for wireless telecommunications applications was held prior to the regular meeting in the School Board Conference Room. The meeting was open to members of the public.

Ms. Walker said there was a higher demand for infrastructure to accommodate increased capacity for more subscribers. She said land use regulations had adapted over time to reflect the recent changes in technology. She said the work session was an informal opportunity for Board members to become familiar with a different set of criteria for wireless telecommunications and ask questions of the staff on procedures. She went on to review key points from the Office of Energy and Planning.

Ms. Walker said requirements were determined on a local level, but local government was expected to act on requests within a reasonable amount of time and there was a 150-day period from receipt of applications for new towers and approval. She said there was a 30-day period to request additional information. She said the 70 Martine Cottage Road application was past that point, but the FCC ruled that times could be adjusted slightly upon mutual consent. Mr. Rheame asked for confirmation that the clock started on April 30, 2014 and that September 30, 2014 would be 150 days. Ms. Walker said that was correct and that the 30-day period continued to run unless there was mutual agreement to stop.

Ms. Walker said she would check with the Planning Department director regarding regional impact considerations. Ms. Chamberlin asked if a regional impact had been determined for the 70 Martine Cottage Road proposal. Ms. Walker said they notified abutters within 20 miles, and if approved, the application would go to site plan and they would then would determine if there was a regional impact.

Ms. Walker said facilities could operate at any height, but lower heights could achieve the same coverage as higher heights in many cases. She said communities could establish safety requirements so they might want to seek a third party expert. She said the proposal should also be reviewed for visual impact and environmental concerns. She said another concern would be interference, which would best be interpreted by a radio frequency engineer. She said the applicant indicated a willingness if the Board wanted a third party consultant. She said it was important to note that radio frequency should not exceed the FCC standards, but needed to be addressed carefully by an expert for legal reasons.

Mr. Rheume asked how the Planning Department would go about finding an expert. Ms. Walker said the list was very small with most experts working for the telecommunications companies, but there were a few and they should seek a review quickly. Vice-Chair Parrott wondered if they could seek advice from the Rockingham Planning Commission. Ms. Walker said they could talk with them, but they did a lot of work for communities and had a limited staff that did not have a lot of previous experience with telecommunications. Vice-Chair Parrott suggested staff at the Rockingham Planning Commission might be able to make some recommendations.

Mr. Mulligan wondered if they might dedicate specific evenings just to review the information on the application and to provide time for public comment. Vice-Chair Parrott agreed that was a good suggestion.

Mr. Rheume commented that they would be dealing with more details and wondered if they might follow a model similar to HDC work sessions in order to sift through all the information. Vice-Chair Parrott agreed that there would be a lot of technical information and said an independent analysis of the claims and conclusions in the applicant's reports would be important.

Vice-Chair Parrott announced that Chairman Witham would not be arriving until 7 p.m. and would recuse himself from this request.

I. APPROVAL OF MINUTES

A) December 17, 2013

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes with one minor correction.*

B) January 22, 2014

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes with one minor correction.*

C) February 25, 2014

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes with one minor correction.*

II. MOTIONS FOR REHEARING

A) Motion for Rehearing by Applicants regarding 200 Spaulding Turnpike.

Chairman Witham reminded the Board that the application was for four or five variances and a Special Exception and that the Board had made a decision to take all the requests together, though one of the points for the rehearing was that they should have been taken separately. He said he could not find any case law that said they had to take them separately, only that they could not deny the application without specific findings, which they did, especially related to the driveway and traffic, though he agreed that they did not address each variance separately. He said one of the requests was to allow a structure within 100' of a residential zone, and if the motion addressed the access, then they would have to deny the overall building. He said it was part of the entire proposal as presented and advertised and it was not easy to select parts of an application for separate motions.

Ms. Chamberlin agreed and said she did not find the presentation persuasive.

Mr. LeMay also agreed and said there were a lot of moving parts that interacted with one another and they had to determine if all the pieces fit together. He said they went through the reasons for denying and the primary reason was the trees and access to the parcel.

Mr. Rheume said as maker of the motion he talked about the access being too close to the abutter. He said it was clearly stated in the motion that the trees were not in the Board's purview, which was up to the Planning Board to determine during site review. He noted they could not just look at the building in the middle of the parcel without considering parking and access through the neighborhood.

Vice-Chair Parrott said the Board used the same procedure as they had for hundreds of others. He said an application had to meet all the criteria to pass and they did not need to go over every issue even if it did not meet one, so he did not feel that was a compelling argument.

DECISION OF THE BOARD

*Ms. Chamberlin made a motion to **deny** the Motion for Rehearing and Vice-Chair Parrott seconded the motion.*

Ms. Chamberlin said no new information had been made to show the Board made a mistake.

Vice-Chair Parrott concurred with Ms. Chamberlin and added that he disagreed with allegations that the Board made mistakes.

Mr. Rheame said the applicant did submit some new information and revised plans, which was fine, but it was not sufficient for granting a rehearing. He said they could re-apply like any other applicant and the Board could look at their new information to decide if Fisher vs. Dover applied and from there determine if their new revised application met the criteria, but that was not a basis for a rehearing.

*The motion to **deny** the Motion for Rehearing **passed** by a vote of 7-0.*

The Board adjourned from the School Board Conference Room to the City Council Chambers and resumed hearings at 7:22 p.m.

III. PUBLIC HEARINGS - OLD BUSINESS

A) Case # 4-7

Petitioner: Kevin James Lilakos

Property: 36 Artwill Avenue

Assessor Plan 229, Lot 4

Zoning District: Single Residence B

Description: Allow a second dwelling unit above a garage.

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

1. A Variance under Section 10.440, Use #1.20 to allow a second dwelling unit on a lot where only one single family dwelling is permitted.
2. A Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot.
3. A Variance from Section 10.521 to allow a lot area of 13,068± s.f. per dwelling unit where 15,000 s.f. per dwelling unit is required.

(This petition was postponed from the April 29, 2014 and May 29, 2014 meetings)

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech appeared before the Board on behalf of the applicant and passed out a copy of an older tax map for the property. He said his client originally received a building permit to construct a garage at the end of Artwill Avenue and was not aware at the time that he would not be able to construct a second dwelling unit above the garage without a variance. He said the three-car garage was almost finished except for some of the exterior trim.

Attorney Pelech said the property was located on a dead end private road in a unique neighborhood surrounded by the Greek Orthodox Church, Portsmouth Public Pool, Portsmouth High School, Great Bay Training Center, a vacant, wooded lot, an office building, Winchester Apartments, the Bowl-a-Rama lot and other residents up the street.

Attorney Pelech said the lot was 26,270 square feet, almost twice the 15,000 requirement and he believed the application met all five criteria. He said the special conditions were that it was on a private, dead end street, adjacent to a municipal high school complex. He said other than the Hopleys and the Willis' there were no nearby neighbors that would be affected by the second

dwelling above the garage and there was a considerable distance from other abutters so the proposal would not result in a substantial change to the character of the neighborhood. He said a second egress would be constructed so there would be no harm to the public's health, safety or welfare, which was in the spirit of the Ordinance and the public interest would not benefit from denying the variances. He said the existing structures would not change and the new structure would be an improvement that would not affect the surrounding property values. He said the garage was permitted and the question was whether an in-law apartment above would be allowed. He said the applicant mistakenly believed he could build a separate dwelling unit above for his father-in-law and substantial justice would be served by allowing and a hardship would be created by denying because the second story of the garage was already built at great expense. He said there would be no benefit to the general public that would outweigh the hardship to the applicant by denying.

Attorney Pelech read several letters of support into the record from Mr. Dave Lemieus at 417 Lafayette Road, Mr. Christian Chase of 34 Artwill Avenue, Domer Realty at 545 Lafayette Road, Daniel Keenan, DMD at 230 Lafayette Road and Ms. Dawn Lewis at Great Bay Services at 413 Lafayette Road.

Ms. Chamberlin asked how much time passed between the issuance of the building permit for storage space and the decision to change the space into an apartment. Attorney Pelech said the building permit was issued December 9, 2013 and the application for the variances was on April 21, 2014. Ms. Chamberlin asked if there were changes in circumstances that caused the applicant to change his desire to have storage space to living space above the garage. Attorney Pelech said the applicant did not think he needed to include a request for the dwelling unit above the garage until he was informed by the Building Inspection Department.

Mr. Rheume said the applicant provided a floor plan for a bedroom, living room, bathroom/laundry area, kitchen and dining area, which constituted a complete independent dwelling. He wondered if there was any consideration to have the father-in-law take his meals with the family and build the unit without a kitchen so it would not constitute a dwelling unit. Attorney Pelech said he advised his client that a kitchen was considered the essential element that created a dwelling unit requiring the variances, but he did not know what had been decided.

Mr. Rheume asked Ms. Walker if it was also her understanding that a kitchen constituted a separate dwelling unit. Ms. Walker said it was, but said Building Inspection and the Planning Department also looked to see if there was a separate entrance, a separate bathroom facility and wanted to be assured that a kitchen would not be added later. She said the Board had added stipulations in the past that kitchen facilities could never be added.

Mr. Mulligan asked if the property shared a drive. Attorney Pelech said Artwill Avenue served three residents. He said there was also a shared driveway off Artwill Avenue to the existing property that had not been used for some time.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney John Springer, representing Ms. Jean Willis of 437 Lafayette Road whose house was actually on Artwill Avenue said they took exception to the statement that there were no close abutters considering she could walk from her driveway to the applicant's property in ten seconds.

He said Artwill Avenue was a private road, but it was owned by Ms. Willis and Mr. Lilakos had a right of way.

Attorney Springer said his client lived on her property since 1977 and Mr. Lilakos bought his property in 2010. He said Ms. Willis had a sewer easement and a sewer line ran through Mr. Lilakos' property, but she had not received a timely notice before he built his garage over the sewer line. He said Mr. Lilakos should have filed for his variances before he built the structure. He added that the 2" waterline under Artwill Avenue that fed the houses in the area was barely adequate.

Attorney Springer handed out copies of the application for the building permit that was submitted in December 2013. He also provided a photo of the construction taken two months before and said the applicant had been building all along. He added that the construction cost listed on the building permit for a detached garage with storage above was estimated at \$12,000, but the variance application of April 2014 stated a hardship would result if the request was denied because they had spent \$100,000 on a three-car garage. Attorney Springer said it was difficult to reconcile the credibility of the two applications and it was a hot button topic in the community when an applicant applied for one project and built another.

Attorney Springer said he understood that they could recommend removing the kitchen from the plans, but thought it would be impossible to monitor and enforce and there was a concern for what would happen when the father-in-law moved out and the dwelling unit was rented out.

Attorney Springer said the perceived hardship was self-inflicted and there were no special characteristics of this property than there were for any of the other surrounding properties. He said the property could be reasonably used as a home without the variances and granting the variances would have a serious impact on Ms. Willis.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech clarified that his applicant had filed two building applications and the second application for the in-law apartment with an estimated cost of \$125,000 was filed on April 21, 2014.

With no one else rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham noted that the second building permit had to be filed to get the variance process going. He commented that being on a private road with an easement that would create more traffic created a concern for him.

Ms. Chamberlin said she was also concerned over the safety implications of having a residential dwelling over a sewer easement that had not been anticipated.

Mr. LeMay said the idea of putting an in-law apartment over the garage without direct access to the main living space where the father would go down a set of stairs instead of through the snow to the main house to be with the family in the middle of winter did not seem likely. He said it was

clear that it was ultimately intended to be an apartment, whether it was now or later. He also agreed that all the houses in the area shared the same conditions and there was nothing unique about the property that created a hardship, except that that building and expense of the garage was a self-inflicted wound.

Ms. Chamberlin made a motion to deny the petition as presented and advertised and Mr. LeMay seconded the motion.

Ms. Chamberlin stated that she did not think any of the criteria had been met and there were a lot of concerns with the application, including the use of an easement that was not permissive. She said they generally did not approve two dwelling units on a single parcel. She said the neighborhood did have unique characteristics, but there was nothing outstanding that would lead them to believe that a variance was required.

Mr. LeMay agreed that none of the requirements had been met.

Mr. Rheaume added that he had concerns, especially with the public interest. He said this was in the Single Residence B district with single family dwellings on relatively large lots and the proposal was in direct contradiction. He said he might be able to buy into the proposal more if there were some other types of districts in the area, but there were none nearby. He said they were asking for two variances, not just to get another dwelling unit in the same building, but two separate dwelling units, which was something they were trying to avoid and was not in the spirit of the Ordinance.

The motion to deny the petition passed by a vote of 7-0.

B) Case # 4-13

Petitioners: Jamer Realty, Inc., owner, A. J. P. Billiards, Inc., applicant

Property: 80 Hanover Street

Assessor Plan 117, Lot 2-1

Zoning Districts: Character District 5 and Downtown Overlay

Description: Year-round game of chance for charity.

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

- 1. A Variance under Section 10.440 to allow a use that is not permitted.

(This petition was postponed from the April 29, 2014 and May 29, 2014 meetings)

SPEAKING IN FAVOR OF THE PETITION

Attorney Pelech appeared before the Board on behalf of the applicant. He noted that charity gaming had been in Portsmouth for some time in various locations such as Pier II Restaurant, Yokens and for a short time at the Bowl-a-Rama Plaza and the Frank Jones Center. He said there were eight licensed charitable gaming organizations in the state with the closest in Hampton, Hampton Falls and Seabrook.

Attorney Pelech said the applicant was proposing to convert a portion of Legends Billiards into a charitable gaming operation that would be licensed by the State with stringent requirements including two cameras on every table at all times and cameras at each exit. The state did not require security guards, but the applicant indicated he would have one or more security personnel on site. He said there would be no slot machines or any machines allowed by State statute. He said there would be 20 employees during charity gaming events who would be paid \$15-\$20 an hour by the applicant. He said there would be a \$4 maximum bet, and 35% going to the charity, 10% to the State of NH and the other 55% to the owner to pay the dealers.

Attorney Pelech said the use was not mentioned in the Zoning Ordinance and therefore was not allowed anywhere in theory. He said they were located in Central District B where they could have bars, nightclubs, an indoor music facility with an occupancy of 500 people like the Music Hall, a cinema, a Chuck E. Cheese, restaurants, hotels, conference center, or shopping center. He said the Ordinance did not list the proposal as a permitted use so they were required to file a variance. He said it was not a referendum on whether charitable gaming was a casino or whether it was or was not good for the community, but it was a question of whether or not it was an appropriate use for the district. He said Legends Billiards and Restaurant would still exist so the proposal would be considered an accessory use with an occupancy of 200 people.

Attorney Pelech presented a packet of nine letters from various charitable organizations, including Betty's Dream, Blue Ocean Marine Conservation, the Chase Home for Children, Cocheco Humane Society, NHSPCA, Portsmouth Fire Fighters, Seacoast Food Pantry, 3D Artspace, and several others. He said the applicant estimated that \$200,000 a year would be paid to these charities from his operation.

Attorney Pelech reviewed the criteria for granting the variance, stated that the operation would cause no essential change to the character of the neighborhood, with frontage on three streets, being less than 100' from the Hanover Street parking garage, across the street from the British Beer Company, the former Page Restaurant, residential apartments, hotels and the Vaughn Mall. He said it would be a tame operation comprised mostly of older people that would not threaten the public health, safety or welfare. He said it would not impact the downtown area any more than patrons of the Music Hall did during a performance. He said substantial justice would be done by granting the use, which would benefit various charities and the general public. He said any perceived benefit to the public by denying would be outweighed by the request. He said the use would not be as intensive as an amusement park, a 400-seat cinema or a 500-seat restaurant. He said they were proposing several improvements and there would be no diminution of surrounding property values. He said the provisions of the Ordinance would result in an unnecessary hardship because there were special conditions that distinguished the property from other properties in the area in that the use was not specified in the Ordinance that would otherwise allow more intensive uses than this proposal.

Mr. James Perin, owner of Legends Billiards said charity casinos were well run, there were only eight casinos in the State, and many had waiting lists of over a year long. He said Portsmouth based charities had the second most income from casinos, with Seabrook having the largest. He said the operation would also have an economic value by employing 20 dealers at an average pay of \$18 per hour and a management staff for a payroll of \$120,000 a year, as well as pump \$400,000 into the economy. Mr. Perin stated that he had been conscientious in running his

business for many years and would be doing improvements to the interior, exterior façade and parking lot.

Mr. Rheaume asked Mr. Perin how many years he had operated the pool hall and what had changed that he was converting half the space to a casino. Mr. Perin said billiards were popular until the early 2000's, following on the heels of the film, "The Color of Money", but it was tapering off hard. He said casinos with games such as Texas Hold 'Em was one of the top five gaming sports in the country.

Ms. Chamberlin asked if all the charities that used the casino would receive money from the operation. Mr. Perin said they were required to submit extensive paperwork to show they were a clean operation for a charity event whenever they were open. He said a single charity was allowed to have an ten nights a year in New Hampshire, and that was why there was a waiting list because there were not enough facilities. Ms. Chamberlin asked if that was a state wide waiting list and Mr. Perin said it was his list for his operation.

Mr. Moretti asked what the hours of operation would be and if the employees would receive tips. Mr. Perin said they would operate from 11:30 a.m. to 12 a.m., seven days a week. He said employees would get an hourly wage of \$7.50 an hour and they would probably earn an additional \$9 an hour from tips based on what was earned at the other Seacoast casinos.

SPEAKING TO, FOR, OR AGAINST THE PETITION

A resident and radiation therapist for Seacoast Cancer Center at Wentworth-Douglas Hospital, as well as Mr. Colin Denoyers on behalf of Motivating Miles Foundation; Ms. Kim Treham, representing Animal Rescue Vet Service; Ms. Astrid Vehland for Zebra Crossings; Ms. Robin Patten with Seacoast Pacific Dance Company; Mr. Mark Herald with Portsmouth Firefighters Charitable Association and Ms. Loren Kim with Young Adults in Transitions all spoke in favor of the benefits of charitable gaming and the waiting lists.

SPEAKING IN OPPOSITION TO THE PETITION

A resident of 77 Hanover Street noted that most of the existing casinos in towns were located in industrial or commercial zones, not residential zones. He said there were 75 residents across the street with 150 more coming soon, as well as residents that lived along Congress Street. He questioned the applicant's statement that the operation would not affect the character of the neighborhood considering that it was already a drinking establishment with noise from patrons at night. He expressed concern that converting to a casino would be a backdrop for crime, would threaten the health, safety and welfare of the neighborhood, and would not be consistent with other established cultural and pedestrian uses in the area.

Ms. Judy Miller of 77 Hanover Street said she lived in a condominium building that was perhaps only 800 feet away from the building and provided a petition in opposition with five signatures added to the previous ten signatures from her neighbors that were submitted during the last request. Mr. Rich Horowitz of 127 Gate Street, Ms. Lora Pantelakos of 528 Dennett Street, Ms. Beth Margeson of 24 Marcy Street and Ms. Mary Krempels of 111 Gate Street all agreed that there were concerns with having a casino in the downtown area.

With no one else rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham noted that this type of use had not been addressed in the Zoning Ordinance, but something similar was addressed 15 years before during a variance request for daycare centers that were not yet mainstream and they were finally worked into the Ordinance. He said in this situation, the City Council was aware of gambling, but did not add it to the Ordinance because they did not want it in the City. It was nothing against charities, which had admirable goals, but they wanted to keep that separate from gambling casinos.

Mr. LeMay said although charitable work funded by this type of activity was laudable, the practical matter was that the Ordinance was for permitted uses and he concurred that gambling was not a permitted use. He said he did not want to sit in judgment of the virtues or lack thereof of gambling casinos. He said zoning uses were probably developed as a result of some national zoning organization and gambling was skipped over intentionally. He said he did not believe that was an oversight and he was unwilling to support a use variance that was contrary to what he believed the Ordinance intended.

Mr. Rheume said he was aware that many charities were looking for more funding opportunities and many took advantage of gambling to raise funds, but the Board was being asked to write something new into the Zoning Ordinance, which would overstep their boundaries as a quasi judicial board. He said there was a process that started with the Planning Board developing a proposal for the City Council, a legislative body that would debate whether it was the right or wrong thing for the City and was more accountable to the populace. He said the Board held a high standard on granting variances on uses and this proposal did not meet their criteria, particularly the hardship criteria to show how this property was different from others in the City.

Vice-Chair Parrott said this was a use variance for a particular spot and sort of a backdoor way to introduce a new element in to the City that the City Council had declined to do over a long period of time. He said gambling was nothing new and agreed that the City Council would have added it during one of their revisions if they had wanted to do so.

Vice-Chair Parrott said they could look at the surrounding neighborhood to consider the nature of the public interest and how a use would fit in. He said the public interest in living downtown had recently grown with a lot more people living downtown, including on Hanover Street. He said other communities might have gambling establishments in short-term residences, but gambling would not be appropriate in a neighborhood of condominiums where people intended on staying. He said it was not the Board of Adjustment's place to end run the intent of the City Council with a radical use that was contrary to the public interest and spirit of the Ordinance.

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

Vice-Chair Parrott carried over his previous comments in addressing the criteria and added that there was a discernible public interest that weighed toward denying this variance because so many people were substantially opposed to it. He said the counter arguments were understandable on how hard it was to raise money, but considering the growth of residential properties, there was no

testimony to indicate that it would enhance the value of surrounding properties. He said the property itself was very similar to other properties in the area, there were no special conditions that distinguished it to create a hardship and this was not a reasonable use to satisfy any of the criteria.

Mr. Rheume noted that a variance for a use was particularly hard to pass. He said the applicant's attorney argued that the lack of a listing in the Ordinance indicated that the use could be there, but he saw the lack of it being there as evidence that the spirit of Ordinance was that the use should not be allowed. He agreed that the proposal could diminish surrounding property values, particularly in downtown Portsmouth as opposed to situations where these establishments were further from the central core area of a city.

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

IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 6-1

Petitioners: Thomas W. and Anna L. Johnson, owners, New Cingular Wireless PCS LLC (“AT&T”), applicant

Property: 70 Martine Cottage Road

Assessor Plan 202, Lot 19

Zoning District: Rural

Description: Install a wireless communications facility with a 130'± tower.

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

1. A Special Exception under Section 10.923.30 to allow a wireless telecommunications facility.
2. A Variance from Section 10.521 to allow a structure height of 130'± where 35' is the maximum allowed.

DISCUSSION OF THE BOARD

Chairman Witham recused himself and turned the gavel to Vice-Chair Parrott.

Vice-Chair Parrott announced that the Board conducted a work session earlier to discuss the process because they were using new criteria.

Mr. Mulligan noted that they needed to hire an expert and would not have any additional information for some time.

Mr. Mulligan moved to limit the public hearing to procedural issues, rather than substance. Mr. Rheume seconded the motion.

Ms. Chamberlin said she hoped everyone would have an opportunity to talk to their concerns for their properties. Mr. Mulligan said there would be an opportunity to speak on substantive issues at later date if they agreed with his motion. Vice-Chair Parrott said it was a preliminary hearing and

agreed that they would have difficulty speaking to the issue without technical understanding, but they could speak to the process, and they could accept other comments if someone could not attend the next meeting. Ms. Chamberlin said she did not have any objection to hiring an expert to assist them, but thought most people knew the basics enough to comment and they could begin developing the public record.

Mr. Rheume said it would be a long drawn out process and it was unfortunate that they did not take it out of order. He said he knew some abutters had retained an attorney, but they only received the packet recently and it would be helpful to review the information further. Ms. Chamberlin said she would object because she did not understand the point of delaying public comment.

Vice-Chair Parrott took voice vote of 5-1 with Ms. Chamberlin objecting.

Mr. LeMay moved to recommend that the Planning Department seek a qualified independent consultant to assist the Board with understanding the technical material for the application. Mr. Mulligan seconded the motion.

Vice-Chair Parrott took voice vote with all in favor of the motion.

SPEAKING IN FAVOR OF THE PETITION

Vice-Chair Parrott invited the applicant to speak briefly to the process. Attorney Brian Grossman appeared before the Board on behalf of New Cingular Wireless, commonly known as AT&T, along with Mr. Peter Marchaund with KJK Wireless and radio frequency consultant, Mr. Sanket Joshi. Attorney Grossman said he understood the motion to limit discussion to process, but he was concerned that public comment might deviate and he thought they should have an opportunity to make a short presentation if there were substantive comments.

Vice-Chair Parrott asked if they agreed with the Board hiring a radio frequency consultant Attorney Grossman agreed so long as they were qualified and the cost was reasonable.

Vice-Chair Parrott said they decided on a procedure, but some members of the public were expecting to speak so they wanted to be fair and give them that opportunity in case they could not return at a later date. Attorney Grossman said he thought it was somewhat unfair that the applicant not to be able to make their presentation because some people might not understand and would make comments that were not relevant. Vice-Chair Parrott said the Board was not prepared to speak to the substance so no votes would be taken in that regard, but he saw no harm if someone said something in error that needed to be clarified later.

Attorney Grossman agreed to start the procedural discussion. He asked that they be given sufficient time before the next meeting to respond to data from the outside consultant. He added that they would be agreeable to providing additional information before the next meeting to allow sufficient time for staff to review. Vice-Chair Parrott said all that would be done through Ms. Walker in the Planning Department.

Mr. Mulligan asked if they were aware of communications received from attorneys retained by a group of abutters and if it had been reviewed. Attorney Grossman said he received the communication on June 12, 2014 and had not had a chance to put together comments.

Mr. Mulligan asked if alternative analysis was sufficient or if anything more would be needed. Attorney Grossman said they provided a thorough analysis, and addressed questions regarding the Ordinance, but all questions may not have been considered and they would address them as needed.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Rob Ciandella appeared before the Board on behalf of direct abutters except Counselor Ruth Griffin. He said he submitted a letter that put forth ideas on the process and requests for additional analysis. He said the Board already acted on the suggestion that they seek an outside expert and asked that they delegate the task of requests for additional information to City staff. He also asked that additional information be squared with New Hampshire law.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Grossman asked when the next meeting would be and Ms. Walker said it would be on July 15, 2014 and the Board could determine if they needed additional work sessions after that.

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Mulligan moved to delegate the task of requesting additional information from the applicant to Ms. Walker in the Planning Department. Mr. Moretti seconded the motion.

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

Chairman Witham returned to his seat.

- 2) Case # 6-2
 - Petitioners: Joseph and Ellen Yarborough
 - Property: 746 Middle Road
 - Assessor Plan 232, Lot 49
 - Zoning District: Single Residence B
 - Description: Lot subdivision creating two nonconforming lots.
 - Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. A Variance from Section 10.521 to allow continuous street frontage for each newly created lot of 50'± where 100' is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Joe Yarborough reviewed the criteria for granting his request, stating that the proposed new house would be similar to others in the area, would not be contrary to the public interest and

would be consistent with the spirit of the Ordinance. He said he did not see any harm being done as a result of creating two lots similar to other lots surrounding it and substantial justice would be done by granting the variances. He said the creation of a new home on a new lot in an area of older homes would not diminish the value of surrounding properties and would probably increase their value. Mr. Yarborough said the lot had the special condition of being narrow and deep with the house on one side of the lot, which created an unnecessary hardship and negated having a deeper lot. He said the house currently complied with the provision of the Ordinance, but the lot was nearly double, which would be well-suited for another home.

Mr. Rheume asked if the current home was a single-family dwelling and if the new home would also be a single-family dwelling. Mr. Yarborough said it was and the new home would be a single-family dwelling as well.

Mr. Rheume asked how he would meet the Ordinance for two parking spots and Mr. Yarborough said they would use the side drive to access parking at the rear. Mr. Rheume said there was no schematic relative to the property line and he would like more detail to show the legal driveway. Mr. Yarborough said the setbacks would be such that no easement would be required.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Loren Crothers-Simard, a direct abutter at 768 Middle Road said land space was part of what made the neighborhood unique and the Ordinance supported that with a 100' maximum. She submitted a letter of concern that building another home on the lot would alter her views and impact her property values.

Mr. Scott Theurer, an abutter three houses away at 790 Middle Road said it was not true that older houses in the neighborhood were poorly maintained. He said it was an attractive and unique neighborhood and several of the dilapidated out buildings had been removed. He expressed concern for property values and that a precedent would be set to squeeze more houses in smaller lots if the Board allowed the request for two non-conforming lots.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Yarborough responded that the trees and landscaping were on their property and it would be an unusual reason to deny a variance. He said it also seemed unusual that owners with lots that were 50' wide were arguing to keep a larger lot that was unlike theirs as a requirement to maintain the character of the neighborhood, pointing out that 50' wide lots were more common. He said he and his wife had a keen interest in maintaining the beautification of the neighborhood where they intended to stay.

With no one else rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Rheume said both the applicant and abutters expressed valid concerns. He said the existing house was cleverly sited with open space, but there was a 50' wide rhythm to the neighborhood lots and they could make an argument that the applicant's proposal to continue that pattern would maintain the character of the neighborhood. He said on flip side, the overall goals of the SRB

District were established to keep density low to medium with the 100’ street frontage as the main tool. He said this house was built in the 1880’s and placed to one side of the lot whereas another house with a 100’ frontage further down the street might not be as amendable, but they could still propose demolishing the house and subdivide.

Mr. Mulligan said one of the other things they had to consider in addition to street frontage was that this lot had three times the square footage for a single-family dwelling so it met the overall goal of low to medium density. He said the problem he had was that it was not a pre-existing lot of record, nor was it created by municipal merging. He said moving from compliance on one lot to two lots of non-compliance would require a lot of relief. He said there were no surveyed plans so he was not sure they had enough information on how the driveways would fit.

Vice-Chair Parrott said when looking at old subdivisions in the City, there were 40’ lots and 50’ lots, but over the years the City revised residential districts from a high of 150’ down to a low of 70’ and there were no 50’ lots anymore. He said there were more 100’ lots now than anything else. He said the parcel had a lot of depth, but the applicant was asking to create two non-conforming lots that were smaller than any lots could be in a new subdivision.

Mr. LeMay agreed and said it would be different if they showed the lot of record showed they were paying taxes on two smaller lots for many decades, but this is a larger lot with a little more value, but not twice as much. He added he did not see the hardship since there were three other houses with 100’ frontage so it was not that unusual along with the 50’ frontage mix.

Chairman Witham said the Board had granted street frontage variances that were close numerous times before, but this lot before subdivision was for the bare minimum.

Mr. LeMay made a motion to deny the petition as presented and advertised and Mr. Rheume seconded the motion.

Mr. LeMay said the application failed on the hardship test and it had not been a burden to keep the house on an conforming lot in existence for decades.

Mr. Rheume said in addition to hardship, the application failed to meet the spirit of the Ordinance considering 100’ of frontage had been set up and this was asking for 50% relief.

Chairman Witham noted that they did not have a professional appraiser’s opinion, but one abutter commented that they could have diminished property values as a result of moving the view of the house from 80’ to 50’.

The motion to deny the petition passed by a vote of 7-0.

- 3) Case # 6-3
 - Petitioners: William L. and Cathy Wansart
 - Property: 317 Thaxter Road
 - Assessor Plan 152, Lot 38
 - Zoning District: Single Residence B
 - Description: Replace nonconforming garage in same footprint.

- 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 structure to be extended reconstructed or structurally altered without conforming to the requirements of the Ordinance.
 2. A Variance from Section 10.521 to allow a right side yard setback of 3'± where 10' is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Bill Wansart of 217 Thaxter Road said the garage and home had been on the lot since the 1930's and the garage was leaning over. He said there was no place to relocate the garage and they intended to rebuild the same garage style on the same footprint. He said the abutters and neighbors were anxious for them to rebuild.

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 reviewed the criteria, noting that granting the variance would not be contrary to the public interest because it was an existing garage in a relatively dense neighborhood. He said the spirit of the Ordinance would be observed, as the structure was not near neighboring homes so it would not affect their light and air and the neighbors were in favor of the proposal. He said substantial justice would be done by allowing the home owner to replace the dilapidated structure and maintain his property. He said the values of surrounding properties would not be diminished because the applicant would improve their property, which would benefit the abutting properties as well. He said the special conditions that distinguish this property were that the garage was pre-existing against the property line and could not be reasonably used in strict adherence without creating an awkward appearance.

Vice-Chair Parrott concurred with Mr. Rheume's comments.

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

- 4) Case # 6-4
 Petitioners: Timothy C. and Priscilla Coughlin
 Property: 185 Broad Street
 Assessor Plan 130, Lot 19
 Zoning District: General Residence A
 Description: Construct a wrap-around covered front/side porch.

- Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.521 to allow building coverage of 31.4%± where 25.5%± exists and 25% is the maximum allowed.
 2. A Variance from Section 10.521 to allow a 1' 3" ± right side yard setback where 10' is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Timothy Coughlin presented his request for decking around the corner of his house. He said they intended to replace their landscaping to improve their line of site up Miller Avenue.

Mr. Coughlin submitted twelve letters of support from abutters and also from neighbors who could view the porch from their homes. He said granting the variance would not be contrary to the public interest or spirit of the Ordinance as their structure would be no closer to the road than any other home in the neighborhood, adding that they also had more open space than others except for one neighbor across the street. He said they would be replacing an ugly concrete stoop with a more aesthetic deck and he hoped the improvements would increase their property and surrounding property values. He said there was a hardship to go up and down the current flight of stairs to enjoy outdoor dining during the summer.

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

Mr. Mulligan said granting the variance for a wrap-around porch that was similar to many others in the neighborhood would not be contrary to the public interest or the spirit of the Ordinance. He said there would not be any gain to the public from denying this proposal and substantial justice would be served by creating a better sight line from the street. He said the value of surrounding properties would not be diminished by replacing an entry with an aesthetically pleasing and useful outdoor space and the neighbors were almost unanimously in support of the project. He said the special conditions of the property creating a hardship were its topography and location on a corner. He said a covered porch in a residential zone was a reasonable use of the property.

Mr. Moretti agreed with Mr. Mulligan's comments.

Mr. LeMay asked to offer a stipulation that the porch remain open as it was originally designed because of the severe setback encroachment. He said his concern was that the next owner might want to convert the roofed deck into a three-season porch. Discussion ensued regarding the need for a separate variance for railings that would close in the structure. Mr. Rheume said the Inspection Department could make sure the building followed the specifications.

Chairman Witham said the relief request was substantial and close to the public right of way, but he felt the intent of the buffer had been met and the essential character would not be changed.

The motion passed by a vote of 7-0.

5) Case # 6-5

Petitioner: Jeffrey T. Bell

Property: 183 Austin Street

Assessor Plan 145, Lot 91

Zoning District: General Residence C

Description: Construct 6'± x 14'± and 10'± x 18'± rear additions. Add front and side dormers.

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 to be extended, reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow the following:
 - a. A lot area per dwelling unit of 1350 s.f.± where 3,500 s.f. per dwelling unit is required.
 - b. A front yard setback of 0' ± where 5' is the minimum required.
 - c. A left side yard setback of 0'± where 10' is the minimum required.
 - d. A right side yard setback of 8'± where 10' is required;
 - e. A rear yard setback of 3'± where 20' is required; and
 - f. Building coverage of 39.2%± where 35% is the maximum allowed
3. A Variance from Section 10.1114.21 to allow off-street parking spaces that do not comply with the dimensional requirements.
4. A Variance from Section 10.1114.32 to allow vehicles entering or leaving parking spaces to pass over another parking space and to enter and leave the parking area by backing into a public street or way.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech appeared before the Board on behalf of Mr. Bell. He reviewed the existing non-conforming structure and the proposal for upgrading.

Attorney Pelech reviewed the criteria, stating that the proposal would not change the essential character of the neighborhood or cause a diminution of surrounding properties. He said the shape and orientation of the lot and non-conforming structure created special conditions and a hardship. He said substantial justice would be done by granting the variance that would allow the building to become more code compliant. He said the hardship to the applicant by not granting the variances would not be outweighed by any benefit to the public as the changes were in the public interest.

Mr. Rheame noted that the owner of the building also owned the nearby store and asked how they were going to keep customers from backing onto the busier road. Attorney Pelech suggested they could put up signage to keep patrons from parking in the residents' lot or they could install a fence.

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

Ms. Chamberlin said the addition seemed massive for a crowded neighborhood. Chairman Witham agreed that expanding from three to four units put too much pressure on the lot and parking requirements. He said property improvements would be welcomed, but the dormers did not seem appropriately scaled and might change the essential character of the neighborhood.

Mr. Rheume agreed that the Board had an obligation to the public interest in maintaining the overall look and feel of the neighborhood.

Vice-Chair Parrott said he was fine with the 6’ x 14’ addition and the rear dormers, but had a problem with the 10’ x18’ addition that put the building up to the property line. He said he also had a problem with the parking and there would be no place to put snow.

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

Mr. Rheume said the proposal failed to meet all of the criteria necessary to grant a variance because it would be contrary to the public interest to expand the building and add dormers that would increase the mass and scale requiring substantial relief and would not fit the essential characteristics of the neighborhood. He said the non-conforming parking spots especially did not meet the spirit of the Ordinance

Vice-Chair Parrott concurred with Mr. Rheume’s comments.

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

6) Case # 6-6

Petitioners: Estate of John F. Cronin III, Crystal Cronin, Administrator, owner and Michael Lefebvre, applicant

Property: 56 Lois Street

Assessor Plan 232, Lot 8

Zoning District: Single Residence B

Description: Create new lot for a single-family residence with 20’ street frontage.

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

1. A Variance from Section 10.521 to allow continuous street frontage of 20’± where 100’ is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Frank Quinn appeared before the Board on behalf of the applicant, along with Mr. Doug LaRosa with TriTech Engineering. Attorney Quinn said they did some research on the street and had discussions with the Planning Department to create a 3.4 acre lot that would be least intrusive to the wetlands.

Mr. Doug LaRosa TriTech said the existing home would be sold on a conforming lot and the new lot would be non-conforming because it was on a paper street with a 40' right of way. He said the applicant would retain 20' and they were requesting a variance of 20' for frontage. He said this was formerly a subdivision known as Prospect Park Annex plan, and there were four lots of record, but they were proposing a single-family, three-bedroom home on a large lot that would be tasteful and add value to the neighborhood.

Mr. Rheume asked for clarification that if Lois Street would be extended to the property there would be 270' of frontage. Mr. LaRosa said that was correct. Vice-Chair Parrott asked what part of Lois Street was a paper street and Mr. LaRosa said the last 272' was a paper street in that a road bed and utilities were constructed, but it was never accepted by the City to his knowledge so there was no pavement. Mr. LaRosa said this lot showed ownership of 20' of the width of Lois Street and they were asking to use that for frontage.

Chairman Witham noted for the record that Attorney Quinn had submitted his response to the five criteria in writing.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Rodney Rodriguez of 94 Lois Street said he and his wife were direct abutters and had lived in their home since 2001. He said there had been debates over uplands and wetlands on the property for years, but they had been asked to remove their pool because the property was next to wetlands. He said he and his wife offered to buy the property before Mr. Lefebvre bought it, but the offer was not accepted because the owners thought they could make more money by developing the lot. He said State representatives and the City Attorney told them that the property was unbuildable because of wetlands no matter how the setback was configured. He said he did not know if the applicant could demonstrate a hardship, but said they could. He said he lived at the bottom of the street and the City had to remove the snow from the front of his driveway with a bucket loader, and they would have no place to put the snow if approved. Mr. Rodriguez also submitted a letter from Mr. Rich Clark of 47 Lois Street.

Ms. Ethel Wolper of 544 Middle Road also spoke in opposition of the proposal, expressing a concern that there would be a reduction in the value of abutting properties.

Mr. Jim Boyle of Portsmouth Toyota, a direct abutter at 150 Greenleaf Avenue stated that the snow drained onto his property. He also noted that the Supreme Court ordered the removal of the sewer line from his property and the line might continue under Lois Street, which could also affect the property owner. He said the applicant was creating their own hardship by purchasing property without adequate frontage.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Michael Lefebvre the builder and developer for the property said the owner's house was in disrepair with water and mold damage and the bank was starting to foreclose. He said the house needed work to sell and he invested \$20,000 of improvements into the house. He said he was familiar with uplands and wetlands topography and they submitted two proposals, one of which was a 2,700 square foot home on 3.4 acres.

Mr. LeMay asked if he was familiar with lots #12 and #13 on the other side. Mr. Lefebvre said he was and they were wetlands lots and could not be built on without a dredge and fill permit. He said the lots sat low and water drained into them so access through those lots was not an issue. He said he thought anyone who had a private drive had to remove the snow from their driveway themselves even if the City plow created a bank.

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham said the applicant showed two proposed house locations with CP1 being the preferred choice.

Mr. Mulligan asked Ms. Walker if the ultimate design would go before the Planning Board if the variances were approved and Ms. Walker said subdivisions had to go before the Planning Board and they would probably need a Conditional Use permit as well. Chairman Witham said any wetlands issues would also go before the Conservation Commission.

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

Mr. Mulligan commented that it was an unusually large lot, over 4 acres, that was uniquely configured to surround two other lots. He said granting the variances would not be contrary to the public interest because of the large lot. He said the proposal would not drastically increase residential density to alter the essential character of the neighborhood, nor would it threaten the health, safety or welfare of the public. He said substantial justice would be done as the loss to the applicant by requiring the property to remain undeveloped would not be outweighed by any gain to the general public. He said a newly constructed home would not diminish surrounding properties and there would be additional oversight by other boards as to where the home would be sited so the property values would hold steady if granted. He said the hardship was that the four acre property surrounded abutting properties with frontage on two paper streets and there was no fair and substantial relationship between the frontage requirement and its application to the newly created lot.

Mr. Rheume said there had been a lot of discussion about the buildability of this lot, but he felt it met the Board's narrow criteria. He added that the intent of the Ordinance was to keep homes from being too closely spaced on a particular street. If Lois Street had been completed, the lot would have had more than enough frontage. He said the hardship was the uniquely shaped configuration of the lot on a paper street.

Chairman Witham said the City had at one time approved the lots as buildable and planned to continue the street. He said the street ended in the only spot for a driveway and the applicant presented a reasonable alternative.

The motion passed by a vote of 4-3 with Ms. Chamberlin, Vice-Chair Parrott, and Mr. LeMay opposing.

7) Case # 6-7

Petitioner: Eugene C. Bergeron

Property: 792 Sagamore Avenue (792-796)

Assessor Plan 223, Lot 3

Zoning District: Single Residence B

Description: Replace existing front stairs with two stairs leading to entrance balcony.

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

1. A Variance from Section 10.331 to allow a lawful nonconforming use to be extended, enlarged or changed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow building coverage of 27.23% where 25.8% exists and 20% is the maximum allowed.
3. A Variance from Section 10.1111.20 to allow a use that is nonconforming as to the requirements for off-street parking to be enlarged without complying with the requirements for the design of off-street parking.
4. A Variance from 10.1114.32 to allow vehicles entering or leaving parking spaces to pass over another parking space and to enter and leave the parking area by backing into a public street or way.

SPEAKING IN FAVOR OF THE PETITION

Ms. Michelle Shields appeared before the Board on behalf of Mr. Bergeron. She said the Bergeron’s owned the property for 28 years and were converting their rentals to condominiums and the existing stairs did not conform. She said the current parking lot for eight cars was gravel and they were proposing to pave it.

Mr. Rheume asked if there were any issues with vehicles backing onto Sagamore Road and Ms. Lynn Libby of Sagamore Road said the traffic coming over the bridge could be hazardous, but they had a good line of sight of because the depth of the parking lot prevented them from going out on the Street. She said tenants never had issues or existing.

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. LeMay seconded the motion.

Mr. Moretti reviewed the criteria, noting that granting the variances would not be contrary to the public interest because it was a tasteful improvement to the front entry to the home and would observe the spirit of the Ordinance. He said substantial justice would be done by the minor change. He said the values of surrounding properties would not be diminished and no owners of neighboring properties spoke against the proposal. He said literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because the improvements of a second set of stairs and storage were necessary.

Mr. LeMay said the relief was modest and the parking was remaining the same.

The motion passed by a vote of 7-0.

8) Case # 6-8

Petitioners: Angelina E. Smith and Juliann Lehne

Property: 73 Northwest Street

Assessor Plan 141, Lot 28

Zoning District: General Residence A

Description: Install an 8'± x 10'± coop to house chickens.

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

1. A Variance from Section 10.440 Use #17.20 to allow the keeping of farm animals (chickens) in a district where such use is not allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. William Lehne and his wife, Ms. Julie Lehne appeared before the Board with their proposal to build a coop on their large lot, 85' away from the street and neighbors.

Mr. Rheume said there was no indication on the number of chickens or roosters. Mr. Lehne said they were not intending to have roosters, but did not know how many chickens were allowed. Mr. Rheume asked how many chicks they were planning on starting with and Mr. Lehne said they were planning on a dozen. Mr. Rheume asked if he would consider less and Mr. Lehne said he thought that would be fine.

Mr. Mulligan said he knew people who had chickens in their backyards and a dozen seemed like a lot. He asked if they had any experience with livestock and Mr. Lehne said they did not, but they had pets. Mr. Mulligan asked where the coop would be located and Mr. Lehne said they were planning on placing it on the garden lot, near the garage.

Mr. Rheume asked what the intent of having the chickens were and Mr. Lehne said for they intended on using the eggs.

Mr. Moretti said he had chickens and ducks and asked if his neighbors had expressed any concern with the manure. Mr. Lehne said they planned on composting the manure for fertilizers and had not heard anything from the neighbors.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Walker said two letters of opposition had been submitted.

SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham informed the Board that they could stipulate the number of chickens.

*Mr. Rheume made a motion to **grant** the petition as presented and advertised with the stipulation that the maximum number of chickens to be kept at any time would not exceed ten and that there would be no roosters. Vice-Chair Parrott seconded the motion.*

Mr. Rheume reviewed the criteria, noting that granting the variances would not be contrary to the public interest because the property was large and on the edge of the Route 1 Bypass. He said they also attached stipulations to the request. He said he generally did not like variances for uses, but chickens were permitted in the SRB District across the street and this property was wide open and similar to those in the SRB District. He said substantial justice would be done by allowing the home owner to take full advantage of their property to raise chicks for egg production. He said other properties were at a reasonable distance and the housing for the chickens will be closer to the highway side of the property so values of surrounding properties would not be diminished. He said the special conditions that distinguished this property from others in the area was that it was large and at the edge of a busy highway.

Vice-Chair Parrott concurred with Mr. Rheume's remarks.

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

X. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 12:05 a.m.

Respectfully submitted,

Jane K. Kendall
Acting Secretary