

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

**July 22, 2014, Reconvened
from July 15, 2014**

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

MEMBERS EXCUSED: David Rheaume

ALSO PRESENT: Juliet Walker, Planning Department

Chairman Witham announced that Mr. Moretti would be sitting in as a voting member. There would be six voting Board members for the last item on the agenda, with four positive votes required to pass the request.

I. REQUESTS FOR REHEARING

A) Request for Rehearing for property located at 56 Lois Street.

Vice-Chair Parrott said that it had become apparent to him that this was not a simple issue. The property had a long history and whether they came to the same conclusion or not, he thought enough issues had been raised that he would make a motion to grant a rehearing.

*Vice-Chair Parrott moved to **grant** the request for a rehearing. Mr. LeMay seconded the motion..*

Vice-Chair Parrott said it was a relatively large property in an unusual place between a couple of dead-end streets and adjacent to some paper streets that had been there for a long time. He said it also contained wetlands and for all those reasons, he thought it would be fair to all parties to grant a rehearing and have a full opportunity for the City, including the Legal Department, to come forward and provide some guidance on the issue.

Mr. LeMay said he had nothing further to add to Vice-Chair Parrott's comments.

Mr. Mulligan said he would not support the motion. He said he made the initial motion to grant the variance and he did not think anything new had been presented that would change the outcome. He said they had a plan that contained all the information that the individual seeking reconsideration was raising. He said it was an unusually large lot that was simply deficient in street frontage, but was otherwise compliant with zoning.

Chairman Witham agreed with Vice-Chair Parrott that it was a complicated case, but concurred with Mr. Mulligan's comments that no new information had provided to show any reason to believe that the Board erred in their judgment.

*The motion to **grant** the rehearing **failed** to pass by a vote of 2 to 5 and therefore was denied. Voting against the motion were Ms. Chamberlin and Messrs. Durbin, Moretti, Mulligan and Witham..*

II. PUBLIC HEARINGS – NEW BUSINESS

8) Case # 7-8

Petitioner: Debra A. Nash dba Five N Associates, owner and James Davis, applicant

Property: 235 Heritage Avenue

Assessor Plan 284, Lot 2

Zoning District: Industrial

Description: Religious assembly use.

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

1. A Variance from Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is not allowed.
2. A Variance from Section 10.1112.30 to permit less than the required number of off-street parking spaces.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech appeared before the Board on behalf of Great Bay Calvary Church. Attorney Pelech said it was a small, but growing congregation that met on a weekly basis in individual homes for services. He said their membership was approaching 40 members. He said they wanted to lease an unused portion of the old Portsmouth Industrial Park.

Attorney Pelech reviewed the criteria and said there would be no threat to the health, safety or welfare of the public and the spirit of the Ordinance would be observed. He said substantial justice would be done as literal enforcement of the Ordinance would create more of a hardship on the applicant than any perceived benefit to the public if the variances were denied. He said they might establish an office for church business, but there would be no external changes to the property, except perhaps to add a second means of egress to meet the fire safety code and no diminution in property values. He said the property was unique because it backed up to residential properties, including Cedar Ridge condominiums. He said it would be not be an overly intensive use and would be complimentary to the other businesses, which would be closed during services that would be held on Sundays and once or twice a week after 6 p.m. He said there would only be five cars in the parking lot during the weekday afternoons. Attorney Pelech stated that the proposed was a reasonable use which would not be overly intensive and literal enforcement of the provisions of the Ordinance would create an unnecessary hardship.

Mr. Mulligan commented that it appeared there would be enough parking, but asked if they anticipated any traffic issues on Heritage Avenue when assembly dispersed from one place all at

once. Attorney Pelech said he did not anticipate any issues. He said the congregation could access the site from Lafayette Road and Banfield Road.

Mr. Jim Davis from Great Bay Calvary Church said services would be from 10 a.m. to 11:30 a.m. along with a bible study at 5 p.m. a couple times a month and evening services on Wednesday at 6 p.m. He said he always traveled up Peverly Road to avoid traffic.

Mr. Mulligan asked how many households he thought would attend and Mr. Davis said their congregation consisted of an average of 33 people. He said all families lived in Portsmouth except for two, one from Rye and the other from Dover.

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. Durbin seconded.*

Mr. Mulligan commented that there were several places of worship in his neighborhood and they tended to make excellent neighbors so the health, safety and welfare of the public would not be threatened at all. He said the proposal would not be contrary to the public interest because there would be minimal exterior impact so that the essential character of the neighborhood would not be altered and the spirit of the Ordinance would be observed. He said substantial justice would be done because the building was under utilized and this would be an opportunity for the owner to establish new tenants and there would be no gain to the public by denying the request. He said the value of surrounding properties would not be diminished because it was a complimentary use during off peak use and he did not hear any objections from owners of surrounding properties. He added that there was sufficient access from two roads to the site so no traffic congestion should result.

Mr. Durbin agreed with Mr. Mulligan’s comments and added that the building design was for a different use, which created a hardship, but granting the use would be complimentary which was in the spirit of the Ordinance.

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

- 9) Case # 7-9
 - Petitioner: Martha Stolzer
 - Property: 5 Pleasant Point Drive
 - Assessor Plan 207, Lot 32
 - Zoning District: Single Residence B
 - Description: Construct a roofed front entryway and roofed left side deck.
 - 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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) A 22'± front yard setback where 30' is the minimum required;
 - b) A 20'± rear yard setback where 30' is the minimum required; and
 - c) 22.5%± building coverage where 20% is the maximum allowed.

Mr. Moretti recused himself from this petition.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech appeared before the Board on behalf of the applicant, Martha Stolzer, along with her builder and architect. A relatively new change in the Ordinance allowed averaging the front yards of properties on the same side of the street within 200' of the subject property so they had revised the variance request. He said he had been involved with the two adjacent properties and averaged their setbacks. He said the building envelope was narrow and the applicant's driveway and garage went under the building. He said they were proposing to replace a larger deck with a smaller deck with a roof and altered steps to reduce the setback from what was advertised.

Attorney Pelech said the applicant met with abutters and submitted letters of support from them. He said Mr. Davis expressed concern that the roof would impede his view so he and Ms. Stolz agreed that she would not put a roof on that portion of the deck.

Attorney Pelech reviewed the criteria, stating that the proposed addition to the front would be minimal, the deck over the garage would be reduced and the steps in the back would be reduced and would not alter the character of the neighborhood, nor threaten the public health, safety or welfare. He said there was nothing across the street except water that would be affected by the front porch and the applicant agreed to remove the proposed roof from the deck so the neighbor's view would not be impeded. He said this was one of the oldest houses in neighborhood and had not been renovated in the last 40-50 years so the update would enhance the property values. He said a hardship to the owner would outweigh any benefit to the public by denying the application and therefore substantial justice would be done by granting the variances. He said the ranch style home had been built out to the limits of the building envelope, which created a special condition and hardship on the property.

Ms. Walker said the Planning Department would like to see more evidence on the alignment of the two abutting properties and asked for clarification on the front yard setback. Attorney Pelech said they had advertised for 30' and they were submitting a plan for 21' on the Sargent property and 25' for the Purtell property. He said he averaged the three properties, but the variance was still 22' where 30' was required. Ms. Walker said the Board would need to include stipulations so the Planning Department would receive proper documentation of the front yard setback average. She said the calculation also might change because the proposed porch was not enclosed and the steps could project up to 6' into the rear yard if they were over 4'. Attorney Pelech said that would also lessen the need for the variance because the steps were the only part that intruded into rear yard. Ms. Walker said that there were two different stipulations in the Zoning Ordinance the allowed

open or uncovered decks, steps, stoops. Chairman Witham said they would eliminate the rear setback request altogether.

Mr. Kelly Davis of 1 Boylan Place said he and his wife were direct abutters to the property. He said he was originally concerned that the building structure would block their only view, but they negotiated with the applicant to remove both the covering and the pergola over the deck so he was in support of the project.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham informed the Board that there was no need for the rear yard setback and the front yard setback was still 22', but it was being presented as a 25.6' requirement instead of 30' and they would need to provide supporting documentation on the change.

*Ms. Chamberlin made a motion to **grant** the petition as presented and advertised without the rear yard setback and the following stipulations:*

- That the applicant would provide the Planning Department with the necessary front yard averaging documentation to support a revised front yard setback minimum requirement of 22' where 25.6' was required.
- That the proposed deck and stairs would be 24' or more from the rear lot line
- That there be no pergola or roof on the proposed deck

Mr. LeMay seconded the motion.

Ms. Chamberlin said the house was fully built out so any modification would cause an encroachment, but it was just a deck requiring a small amount of relief. She said the applicant had worked with the neighbors so the request did not conflict with the purpose of the Ordinance.

Ms. Chamberlin reviewed the criteria, noting that granting the variance would not be contrary to the public interest because the proposed additions would improve the appearance and value of the property and the small amount of relief observed the spirit of the Ordinance. She said substantial justice would be done by the modest request and the neighbors were in support of the proposal. She said a neighbor had testified that the applicant had modified the original proposal to protect their ocean view so the values of surrounding properties would not be diminished. She said literal enforcement of the Ordinance would create a hardship because the special conditions of the property that distinguished it from others was that the lot was on a corner and the house was fully built out so any modification would cause an encroachment. She said the deck only required a small amount of relief and that would not encroach on the neighbors.

Mr. LeMay agreed that the request was not substantial and the request was reasonable.

*The motion to **grant** the petition with revisions and stipulations **passed** by a vote of 7-0.*

Mr. Moretti resumed his seat.

10) Case # 7-10

Petitioner: Jeffrey T. Bell
Property: 183 Austin Street
Assessor Plan 145, Lot 91
Zoning District: General Residence C

Description: Demolish two-story rear wing. Construct 6'± x 14'± rear addition, roof over front landing, and front and left 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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) A 3'± front yard setback where 5' is the minimum required;
 - b) A 0'± left side yard setback where 10' is the minimum required; and
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.

Chairman Witham informed the Board they had an opportunity to address Fisher vs. Dover and none of the members felt it was necessary.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech appeared before the Board on behalf of the applicant, Jeffrey T. Bell and passed out a memo in response to Fisher vs. Dover. He said they listened to the Board's comments on June 17, 2014 and returned with revisions. He said they decided to keep the three units and demolish the carriage house portion of the structure that needed a new foundation. He said the only variance now required was the vertical expansion of a non-conforming structure because they were proposing the addition of dormers. He said the only footprint change would be the infill addition that was previously supported in June.

Attorney Pelech said they were required to have 5½ parking spaces, but they had 7 and the parking spaces were the same as they had been for years. He said they had 25' of width where the Ordinance called for 25.5' and they were 6" to a foot short of the 19' or 20' depth requirement on two of the spaces. He said each unit had two spaces so it worked well. He said it was a dense, multi-unit neighborhood where many did not have off street parking.

Attorney Pelech submitted photographs to show some of the characteristics of the neighborhood. He said there had been some concern with the proposal for dormers, but it was an old building with ceiling heights of less than 7' that did not meet current building codes and they were raising the ceilings to increase the open space, light and air. He said the proposal would not threaten the

public health, safety or welfare and substantial justice would be served by granting the request to make the building more code compliant. He said it was an intense multi-family neighborhood and many properties in the area had been renovated and the improvements would not diminish surrounding property values. He said any perceived benefit to the public in denying the petition would not outweigh the hardship to the applicant. He said there were unique conditions in the old property with small lot line setbacks, but they were increasing the compliance.

Mr. Mulligan asked how much height would be gained from raising the roof and the builder said the habitable space would be 7’.

Vice-Chair Parrott noted that there were concerns that the proposed dormers would not be consistent with the style of others in the neighborhood and asked what was different in the new proposal. The builder said they formerly proposed gable style dormers, and had changed them to doghouse style dormers to be more in keeping with others on Austin and Cabot Streets.

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

Mr. Durbin said the removal of the existing carriage house in the back and replacement with something similar in dimension, though taller was compliant with the Zoning Ordinance. He said he had no issue with dormers in this eclectic neighborhood and the remodeling would be an improvement.

Mr. Durbin reviewed the criteria, stating that granting the variance would not be contrary to the public interest because the improvement conformed in most respects to others in the neighborhood and therefore would not alter the essential character of the neighborhood and would be in the spirit of the Ordinance. He said it should also bear weight that the applicant made alterations to the proposal based on previous comments by the Board. He said the values of surrounding properties would not be diminished because they were making improvements, which would also enhance surrounding properties. He said the hardship to the applicant, if the petition were denied, would not be outweighed by any perceived benefit to the public. Mr. Durbin said the front and left setbacks and the parking were not being altered which created special conditions that distinguished the property from others in the area. He said it was an infill project that would increase the existing height, so there was no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. The proposed use was a reasonable one. He noted that the applicant was also making improvements to other non-conforming conditions on the property.

Ms. Chamberlin agreed that the reduction of non-conformity was significant and the request for relief was modest and responsive to the neighbors’ and Board’s concerns.

Chairman Witham agreed that they had returned with significant changes.

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

11) Case # 7-11

Petitioner: Herring Pond LLC

Property: 856 Route One By-Pass

Assessor Plan 160, Lot 30

Zoning District: Business

Description: Install a 10'± x 10'± x 65'± high freestanding sign.

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

1. A Variance from Section 10.1243 to allow more than one freestanding sign per lot.
2. Variances from Section 10.1253.10 to allow a freestanding sign 65'± in height where 20' is the maximum allowed and to allow a freestanding sign that is located closer than 20' from the front property line.

SPEAKING IN FAVOR OF THE PETITION

Attorney Jake Marvelley appeared before the Board on behalf of his client. He stated that O'Brien's General Store opened in 2004 and had two fuel stations. He said they were requesting a variance because passenger vehicles were not able to see O'Brien's sign from Route One Bypass.

Attorney Marvelley submitted a memo and addressed the criteria for granting the variance, stating that it would not be contrary to the public interest or conflict with the spirit of the Ordinance or zoning objectives. He said it would not alter the character of the neighborhood to allow an advertising sign similar to that of nearby competitors nor would it diminish surrounding property values. He said it would not interfere with the travel route, threaten the health, safety or welfare of the public and the sign would allow drivers time to identify the business and turn in safely. He said there was a special condition in the property, which was on a divided highway that was only visible when traveling from Portsmouth to Kittery. He said the Gulf station had a tall, freestanding sign that motorist could view before reaching the overpass and other nearby gas stations also employed freestanding signs so it was a reasonable request and there was no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. He said literal enforcement of the Ordinance would not benefit the public and denial would create a hardship for the applicant who wanted to enjoy the same benefits of a visible sign as their competitors.

Mr. Durbin asked for photos showing the impact the sign would have on the abutting Dennett Street residents. Attorney Marvelley said photos had been submitted and were taken in winter, showing the bare trees and the hill behind Dennett Street. He said the sign would also be oriented toward Route One Bypass, not Dennett Street. Mr. Durbin asked if he could say with certainty that the light would not be visible from Dennett Street. Attorney Marvelley said he could not guarantee it, but he did not believe the sign would be any more visible than any of the other signs.

Mr. Moretti said he had lived in that neighborhood his whole life and recalled seeing the light from the former Esso station sign all night. He said he did not see how this sign would be any different. Attorney Marvelley said his experience was that this sign would be less visible. Mr. Moretti asked if their sign would be the same height as the others and Attorney Marvelley said the Shell Station sign was 50’ high and theirs would be 55’ high. Vice-Chair Parrott said the standard in the City was 20’ and asked if they had done a visibility study to consider the minimum height. Attorney Marvelley said they had not done a study, but had arrived at that height by traveling from the traffic circle to be sure their sign would be higher than the Shell Station sign to make it visible, yet relatively uniform.

Ms. Carmella O’Brien, the owner, said she took over the business in 2008 and had struggled with a lack of signage.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Tony Coviello of 341 Dennett Street, Mr. John Hallowell of 361 Dennett Street, Mr. Karsten Pohl of 416 Dennett Street, Mr. Noel Steven of 33 Hunters Hill Avenue, and Mr. David Platt of 475 Dennett all expressed concerns with the impact of light pollution on their properties.

SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Durbin said the application did not meet any of the criteria, including altering the character of the neighborhood with the increased signage and height. He said the abutters made valid points in reference to the application not being in the public interest or spirit of the Ordinance and the negative impact on the public interest if the petition were granted would outweigh any perceived benefit to the applicant. He said the City tried to control signage and retain the residential feel of Dennett Street. The site location was where it was and there was no compelling argument for a hardship.

Mr. LeMay said the Board had voted in favor of a sign for the Shell station earlier in the, but did so because the new sign lessened the light impact on the surrounding neighborhood. He said it made no sense to put another 50’ high lit sign in the area, and fog and snow would increase the reflection and affect property values.

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

- 12) Case # 7-12
- Petitioner: David B. and Deborah A. Adams
- Property: 210 Gates Street
- Assessor Plan 103, Lot 26
- Zoning District: General Residence B

Description: Install a 24” x 24” x 28.5” a/c compressor at the rear of the lot.

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

1. A Variance from Section 10.573.10 to allow a 6’ ± rear yard setback where 5’ is the minimum required for an accessory structure.
2. A Variance from Section 10.521 to allow 43.2% building coverage where 30% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. David Adams presented his proposal to place an a/c compressor near an alcove along a stonewall near a neighboring property line. The Board asked how far he would be from abutters and he said it would be 25’ to the nearest neighboring structure, below the 4’ stone wall level so it would not be visible unless someone stood on the edge. He said the compressor was very small and quiet and the sound would go up not across.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Clayton Emery of 114 Mechanic Street said his property backed up to Mr. Adams’ property and he was opposed to the application because he was concerned with the noise and risk of a fire hazard. He said he thought a window unit would be sufficient and he expressed concern that it would depress their property values.

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.*

Mr. Mulligan said concern had been expressed by an abutter over the a/c compressor, but the applicant was going through the correct procedures for the proper building permit and the opposition was not speaking to the relief that was being requested.

Mr. Mulligan reviewed the criteria, noting that granting the variance would not be contrary to the public interest because the essential character of the neighborhood would not be changed. He said the spirit of the Ordinance would be observed by a modest change to the overall footprint of the property and minimal additional encroachment. He said substantial justice would be done and there would be no gain to the public if the petition were denied. He said the values of surrounding properties would not be diminished and the most impacted property was the direct abutter on Gates Street, but that property owner did not appear in opposition. He said the applicant had done a good job with restoration. He said the home was built in the 1700’s before zoning or planning and there were a number of encroachments on three sides of the property line so there were special conditions that distinguished it from other properties in the area and created a hardship. He said there were a series of windows along the foundation that made it difficult to place the unit in any other location and this was the most reasonable place for a reasonable use.

Mr. Moretti agreed with Mr. Mulligan’s comments, but said he also had sympathy for the abutter, as he too lived in a dense neighborhood, though he pointed out that neighboring window units running through the night were even louder. He said this was an old home with historic attributes and an a/c compressor on the ground would be more attractive than window units.

Mr. LeMay said the 6’ setback to the sideline, with the unit just 10’ away from the neighboring window was a big concern, but the stonewall that was impervious to noise was a huge mitigating factor.

Chairman Witham said the Board saw several requests for compressors in the area each year and most proposed shrubs to cut the noise, but this one was the most sheltered behind stone and masonry.

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

13) Case # 7-13

Petitioner: HCA Health Services of NH Inc., owner, Portsmouth Regional Hospital,
applicant

Property: 333 Borthwick Avenue

Assessor Plan 240, Lot 2-1

Zoning District: Office Research

Description: Construct a helipad in the parking lot to the left of the building.

Request : 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 #15.20 to allow a heliport as an accessory use incidental to a permitted principal use.

SPEAKING IN FAVOR OF THE PETITION

Mr. Bill Duffey, Vice President for Engineering for Portsmouth Hospital appeared before the Board to reintroduce their request for a helipad. He said they did not have funding to pursue the project when they were granted their request a couple of years before, and currently used the helipad at Pease International Tradeport, which added more time for patients to get into the operating room. He said helipads were common practice and they were one of the few hospitals that did not have one.

Mr. George Fantelli, an engineer from Concord, provided documents and summarized the special exception and variance request. He said the special exception was an approved use under office research. He said it was an active parking lot, but they would be in contact with the Pease Tower at all times and the approach and departure path would be limited to Route 16 and I-95 and there would not be any flights over any buildings. He said the helicopter was basically an aerial ambulance, which was exempt from zoning regulation statutes, but they were aware of residential areas that would be sensitive to noise and there would be no detriment to surrounding property values. He provided a letter of support from their abutter, Liberty Mutual. He said there would be no odors from jet fuel, but their ground time would be limited and they shut the engine off when landing. He said 20 parking spaces would be affected, but the hospital had 700 spaces where 500 were required. He said security personnel would manage traffic. He said there would be gates, no

traffic safety hazards and no increase in traffic from the use. He said there would be adequate emergency and safety equipment, trained personnel and procedures in place with no hazards from fire or explosions and no demand on municipal services. He said they would improve the pervious surfaces using pavers with holes to allow grass to grow, water from the landing pad would go into existing basins and there would be no storm water runoff.

Chairman Witham asked how many trips through Pease they were seeing and Mr. Duffey said they averaged 50 flights a year, averaging one a week.

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 special exception as presented and advertised. Ms. Chamberlin seconded the motion.*

Vice-Chair Parrott reviewed the standards for granting the special exception, noting that the proposed location was not in proximity to buildings on neighboring properties so that granting the special exception would not present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials. Procedures would be in place to deal with any potential fire hazard during helicopter operations and any heat, odors, noise or vibration would be infrequent and of short duration so there would be no detriment to surrounding property. Lastly, he said there would be no excessive demand on municipal services or any increase in storm water runoff.

Ms. Chamberlin concurred.

*The motion to **grant** the special exception **passed** by a vote of 7-0.*

14) Case # 7-14

Petitioner: Kristina Logan

Property: 220 South Street

Assessor Plan 111, Lot 1

Zoning District: Single Residence B

Description: Replace existing storage shed with 15'± x 30'± artist studio.

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 reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 1.5'± right side yard setback where 10' is the minimum required.
3. A Variance from Section 10.521 to allow 20.96%± building coverage where 20% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kristina Logan said she had lived at the property since she purchased it in 1996 and had an art studio in the basement. She said she outgrew the basement space and wanted to work out of the garage so she could continue working in Portsmouth. She said she intended to maintain the same look of the garage that fit into the South end. She said she went before the Conservation Commission and the Planning Board who recommended she put a planting area down along the southwest border to improve the drainage. She said she spoke with her neighbors who were in support of the proposal.

Mr. Mulligan asked if there would be full utilities and plumbing for a bathroom in the renovation and Ms. Logan said that was correct. Mr. Mulligan asked Ms. Logan how she would assure the Board that she would not convert the garage into a studio apartment. Ms. Logan said there would be no kitchen space and no room for a bed. She said there would be heating for the winter, but no air conditioning. She said she had a history of working at home for the past 18 years and it would only be an artist's studio with utility storage space for her snow blower.

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 said the Board was afraid they were running a risk anytime they approved a garage with a sink. It was an act of faith in the applicant, but anything else would require a building permit and hopefully it would get stopped.

Mr. Mulligan agreed and had some concern over encroachment, but it did not appear to be a problem for the nearest neighbor and the applicant was willing to move the building envelope slightly.

*Mr. Durbin made a motion to **grant** the petition as presented and advertised with the stipulation that the proposed studio would not to be used as living space or an independent dwelling unit and there would be no cooking facilities in the space. Vice-Chair Parrott seconded the motion.*

Mr. Durbin said he felt the application was “de minimus” in nature with a change of less than 1% in building coverage. He said the right yard setback looked to be the same as what existed and the application met the spirit of the Ordinance and the public interest tests. He said substantial justice would be served and the detriment to the applicant in denying the project would not be outweighed by any perceived public benefit. He said the value of surrounding properties would not be diminished as the setback would remain the same with a slight increase in length. He said the special conditions that distinguished it from other properties in the area was that it was a structure that was already 1.5’ from the right yard property line and the building coverage was only increasing slightly above what was allowed.

Vice-Chair Parrott agreed and added that the neighborhood had some odd shaped lots. He said retaining, remodeling or rebuilding a structure on the same footprint was probably the best way to

go for everybody. He added that it would not be a big change for the neighbors who did not seem to have any problem with the proposal.

The motion to grant the petition with a stipulation passed by a vote of 7-0..

Mr. Durbin recused himself from the following petition.

15) Case # 7-15

Petitioner: John Hall, owner, Leonard and Wendy Cushing, applicants

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Construct an 11'± x 18'± two and a half 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 to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 6'± right side yard setback where 10' is the minimum required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Lenny Cushing said they had a new addition to their family and were looking to add on another primary bedroom. Mr. Cushing reviewed the criteria for granting the variances, noting that it would not be contrary to the public interest or spirit of the Ordinance because he was not looking to extend the footprint, but wanted to add a 2 ½-story addition. He said there were no abutters to the back of the property that would be affected. He said one neighbor expressed a concern that a dormer would infringe on their privacy so he was happy to let it go and not put windows on that side so they would not feel intruded upon. He said it was the worst house on the block and they had made many improvements to replace wiring hazards, poor insulation, replace windows, and plumbing and they wanted to make the building more conforming with others in the neighborhood. He said the special condition of the lot was that it was a non-conforming, narrow house, which created a hardship.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Tara Hamblet of 118 Elwyn Avenue agreed that the house was in disrepair and said she was not opposed to improvements, but was concerned because she was not sure from the plans what the addition would look like. She said the space between their homes was only 17' and it already felt like an alleyway and was afraid the addition would affect the value, privacy and shade the light to the side of her house.

SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham said he could see the impact the addition would have on the abutters in the aerial photo provided. He said the applicant could build another addition of same height without a variance and the same impact on the abutter so he was trying to grapple with which would have less effect on abutters.

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

Mr. Mulligan said all five criteria were needed to meet a variance request and although it was a close case they needed to consider if the loss to the applicant if the petition were denied outweighed any gain to the public interest. He said in this case the applicant could lose an addition, but the abutters could lose a significant amount of air, light and space that the setbacks were designed to protect so granting the petition would not do substantial justice. He said he was also not convinced that the proposal would not affect surrounding property values. He said the applicant stated that it was the worse house on the block, but that was not a justification for granting a variance. He stated that there were other things that could be done to the property that might be less palatable, but this was the current proposal before the Board.

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

Mr. Moretti said although the plans were sketchy at the moment, he thought they were probably in the development phase and would be more concerned that denying the proposal would push the applicant to do something less tasteful.

Chairman Witham agreed that the proposal could affect the abutters and impact the neighborhood, but also wondered if the proposal would be any worse than what might be built if denied.

*The motion to **deny** the petition **failed** to pass by a vote of 2-4 with Ms. Chamberlin, Mr. Moretti, Vice-Chair Parrott and Chairman Witham opposing the motion.*

Chairman Witham informed the Board that they would need a positive motion to grant.

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

Mr. Moretti reviewed the criteria, noting that granting the variance would not be contrary to the public interest because the applicant could do something less tasteful and this proposal could work well if they worked with the neighbor so that the spirit of the Ordinance would be observed. He said substantial justice would be done by allowing the applicant to get an additional room in the house and put the bathroom on the second floor where it belonged. He said he understood the concerns of the abutters, but having a home in disrepair would have just as much of an impact on the values of surrounding properties. He said the special conditions that distinguished the property from others was that it was in disrepair and the addition would improve property values.

Ms. Chamberlin supported Mr. Moretti's comments and added that it was a close call. She said she did not see that a vertical expansion in the same footprint would cause public harm and there would be no benefit to the public in denying the petition.

*The motion to **grant** the petition **passed** by a vote of 4-2 with Mr. LeMay and Mr. Mulligan opposing.*

III. RULES and REGULATIONS – FINAL APPROVAL

Ms. Walker reviewed recent changes.

Vice-Chair Parrott moved to adopt the final changes to the Board of Adjustment Rules as presented. Mr. Durbin seconded the motion and all were in favor.

IV. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Jane K. Kendall
Acting Secretary