

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

7:00 P.M.

APRIL 21, 2015

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott; Christopher Mulligan, Jeremiah Johnson, David Rheame, Patrick Moretti.

MEMBERS EXCUSED: Derek Durbin, Charles LeMay

ALSO PRESENT: Jessa Berna, Planning Department

Mr. LeMay and Mr. Durbin were excused. Messrs. Johnson and Moretti assumed voting seats for the meeting.

I. APPROVAL OF MINUTES

A) March 17, 2015

*Mr. Mulligan made a motion to **approve** the March 17, 2015 minutes. Mr. Moretti seconded the motion. The motion **passed** with all in favor, 6-0.*

II. OLD BUSINESS

A) Request for Rehearing regarding property located at 3613 Lafayette Road.

Mr. Rheame noted that, in looking at the arguments made by the appellant, two different sections of the Ordinance had been requested each time, and that both referred to animated and changeable signs, which were the same thing, so he felt that the Board had addressed it adequately. The first time the appellant had stated that the sign changed eight times a day, but the second time he had stated that the sign changed three times a day. The Board had indicated that they were not amenable to eight times a day, and Attorney Pelech had implied almost immediately that three times would then be adequate. Mr. Rheame said he was not convinced that the Board erred and suggested that the Request for Rehearing be denied. Chairman Witham said he felt the Board had been thorough both times, and he did not see any gray areas. Vice-Chair Parrott stated that the minutes from the previous meeting were clear and reflected that the Board understood what the Ordinance called for. The signs were interrelated and the definitions of the signs were unambiguous, and he felt that the Board's comments reflected as much. He said that he supported Mr. Rheame's decision.

DECISION OF THE BOARD

*Mr. Rheaume made a motion to **deny** the Request for Rehearing as presented and advertised. Vice-Chair Parrott seconded the motion.*

*The motion to **deny** the rehearing **passed** with all in favor, 6-0.*

A) Case # 3-5

Petitioners: Michael Brandzel & Helen Long

Property: 39 Dearborn Street (Dearborn Lane)

Assessor Plan 140, Lot 3

Zoning District: General Residence A

Description: Construct a 12'± x 18'± shed in front yard. Construct an 8'± x 13'± single story addition and add shed 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 structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - (a) A front yard setback of 5'± where 15' is required.
 - (b) A right side yard setback of 4'± where 10' is required.
 - (c) A rear yard setback of 3'± where 20' is required.
3. A Variance from Section 10.571 to allow an accessory structure to be located in a required front yard.

This petition was postponed from the March 17th meeting and revised by a change in the size of the proposed shed.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech on behalf of the applicant stated that the property had a unique character and special conditions, which created the hardship. He stated that the property was at the end of a short street, and because it was accessed by Dearborn Lane, the lane side of the property became the front yard, even though the house was oriented toward the water. The neighbor's property line was to the right of the home, and coupled with the fact that it was close to Mill Pond and had a 100-foot tidal setback requirement, it created a situation where the only area the property could be added to was the corner of the property closest to the neighbor, which was the right rear corner of the property. Attorney Pelech said the petition was twofold because the proposed additions to the home were within the existing footprint, while the proposed one-story detached 12'x18' shed was located five feet from the right side yard and five feet from the front property line. He noted that he had given the Board a letter signed by all the abutters, who were in agreement about the view easement on the property. Attorney Pelech went through the five criteria, stating that they would all be met. He emphasized that there was a need for the shed to store all the tools. Regarding the dormers, he stated that it was a reasonable request because there wasn't much headroom in the master bedroom. He also felt that it would be a plus for the neighborhood and that it was the type of project that the City should back. He noted that the neighbor Mr. Stasiuk was at

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first reluctant to support the project but then agreed to support it when he found out that the view easement would be granted. Chairman Witham noted that the letter signed by the abutters could be included as five stipulations if the approval was granted, and he asked the Board members if they understood all the requested stipulations, and they did.

Mr. Rheume asked Attorney Pelech if the City recognized Dearborn Lane as a street, and Attorney Pelech said it did. Mr. Rheume asked why the shed was larger than it was in the previous proposal. At this point, the owner Mr. Brandzel approached and said there was a utility trailer on the property, and in order to improve his relationship with Mr. Stasiuk, he agreed to get rid of the trailer to get a better view of North Mill Pond. However, that left 268 square feet of equipment and tools, so he needed a larger shed, but he would make it work in the footprint. Mr. Rheume stated that he had some trepidation about approving the stipulations that the neighbors had asked for because normally the Board did not deal with that sort of thing. Chairman Witham stated that he was comfortable with the Board just making reference to the stipulations because it was a sensitive subject and people had worked together to come to an agreement. He asked Mr. Nick Cracknell to expand on the issue. Mr. Cracknell explained how he encouraged the applicant and Mr. Stasiuk to resolve a long-standing dispute regarding the view corridor and the shed and to work together to make the shed an appropriate size. He felt that Dearborn Street was challenging and that it was a good thing for the neighborhood and the City to have the agreement. Mr. Cracknell also said that he felt design review was a big part of the BOA's review. All the subcomponents were byproducts of a long and difficult conversation between the two parties, and he felt that it was refreshing that the parties had come to a thoughtful agreement. He strongly encouraged the Board to imbed all the stipulations if they approved the petition.

Mr. Mulligan commended Mr. Cracknell for his great work but asked what would happen if, by imbedding the stipulations like the view corridor, it triggered someone complaining that the stipulations were not being followed. He asked if it would cause a zoning review or if it would be left to private remedies. Mr. Cracknell replied that it would incur a review by the Compliance Officer, Mr. Jason Page. When Mr. Mulligan expressed reservations about Mr. Page being the neighborhood referee, Mr. Cracknell replied that Mr. Page knew the neighborhood well, and the goal was that people would be reasonable and avoid the City being a referee. He said it was important to quantify as much as possible for clarity.

Mr. Michael Stasiuk of 31 Dearborn Street stated that he echoed what Mr. Cracknell said about the details of the stipulations. He said the reason the shed was made larger was because he agreed to a mitigation to trade a larger shed for a view easement. The shed was 3-1/2 feet from his property and his tiny back yard mattered a lot to him. He said the details on the letter were what he agreed to in order to accept the impact of encroachment of a larger building, and the details mattered. He did not want a sliding barn door or a spotlight that close to his yard, but some of those things had not been said out loud. He asked whether the entire letter should be read out loud so that it was in minutes. Chairman Witham replied that it wasn't necessary because the letter was on record and everyone had read it. Mr. Rheume asked Mr. Stasiuk whether his primary concern was only the shed and not the proposed additions to the home. Mr. Stasiuk replied that he understood why the changes to the home were being made and agreed with them.

Mr. George Dempsey of 42 Dennett Street stated that he had the most obvious view of the project and felt that it was a win-win situation for the City. He said the applicants had done a tremendous amount of work on the interior and exterior of the building to improve the property and its visual aspect, and he fully supported it.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech stated that the Board did not have to go through every paragraph and decide whether it should be a condition or not but could make the whole agreement one condition. With no one further rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham felt that the Board should include the agreement with the five stipulations because it was a unique lot configuration and he felt that it was most reasonable to put the shed in the location it was sited in respect to the wetlands.

Mr. Rheaume stated that he was in full support of the petition. He felt that the one thing making the shed a problem was that the yard was viewed as a front yard, but if it was considered a side lot, the owners could erect an even larger shed. He was still concerned about all the stipulations in the agreement because he felt that the Board was putting the Code Enforcing Officer in the position to work through those stipulations and make sure something like a power tool was not put in the shed. He did not like the precedent that it set and felt that it should be the exception rather than the rule in the future. Chairman Witham said that he understood, but the view easement would be registered with the deed so it would be out of the Board's hands. He said he questioned the use of mechanical equipment in the shed, but if the neighbors agreed, it was fine with him.

*Mr. Mulligan made a motion to **grant** the variance as presented and advertised with the stipulation that Items 1 through 5 in the letter be included as stipulations. Vice-Chair Parrott seconded the motion.*

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because after all the work was done, the character of the residential neighborhood would not be altered. It would result in substantial justice because the loss to the applicant would be large. There was a need for storage on the property, and placing the shed on the side yard would mar the view of the water, so there was no corresponding gain to the public. Also, the bedrooms were substandard, so the dormers would be beneficial to the applicant, and there would be no gain to the public if denied. He stated that granting the variance would not diminish the values of surrounding properties because it was a substantial renovation to the property and all the neighbors supported it. The special conditions of the property included it being on a private lane, which made the front yard incongruous. The front yard faced the water, but for purposes of the Ordinance, it was not accurate, so a lot of setback relief was triggered by forcing it as the front yard.

Also, there was the wetland setback to contend with. He felt that the shed was a reasonable use of the property and the livable space in the bedrooms would be increased, so the hardship test was met. He also agreed with Mr. Cracknell that it would be a big improvement, so he felt that it should be supported. Vice-Chair Parrott stated that he concurred with all of Mr. Mulligan's comments. He added that the least attractive part of the shed was already on a small lot, but it seemed to be the best of difficult choices. Because the adjacent house backed onto the view of the shed, he felt that it was a good solution and compromise.

The motion passed with all in favor, 6-0.

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 4-1

Petitioners: Peter O. & Karen G. Dawson Revocable Trusts

Property: 648 Lincoln Avenue

Assessor Plan 148, Lot 18

Zoning District: General Residence A

Description: Install two HVAC compressors.

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 30.4%± building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The petitioner Mr. Peter Dawson told the Board that he wanted to install two HVAC compressors in the rear corner of the property, which was the only place they could be put without excessive runs of lines and electricity. He said one compressor was needed in the attic and one in the basement. Mr. Dawson stated that his neighbors were in support.

Mr. Rheaume said he noticed a disconnect in the information given to the Board and he asked Mr. Dawson to clarify whether the compressors were placed within five feet of the property line or placed at a minimum of five feet away from the property line. Mr. Dawson replied that it would be five feet from the current property line where the edge of the compressor was.

He also asked Ms. Berna about a previous BOA action noting that the Board granted a variance to allow for 27.3% building coverage back in 1997 but were now reporting that the building coverage was 30.1%. Ms. Berna thought it could be a math error but felt that it was within the footprint. Mr. Dawson said that the footprint had not changed at all.

Mr. Bob Graham stated that he lived next door at 664 Lincoln Avenue and that he and his wife felt good about the project because it was an extensive system that would increase property values and would not be noisy.

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 variance as presented and advertised. Mr. Moretti seconded the motion.*

Vice-Chair Parrott stated that the project was straightforward, and the two outside units would be positioned in the most logical place on the property. He felt that the only people who could be affected by it were the Grahams, and they approved it. He added that compressors were becoming common around the City and would not interfere with any other action on the property, and it was also unlikely that anyone would build anything on that part of the property in the future. He stated that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because it would be an enhancement to the house and not a detriment to anyone else and would result in less noise than any other units. Substantial justice would be done because there was no offsetting concern or public interest that would be violated by denying it. Granting the variance would not diminish the value of surrounding properties because the only possible effect would be next door and they were in agreement with it. Also, no one else would hear the sound of the units. The property had special conditions that included the configuration of the narrow lot and the placement of the house, so he felt that it met the hardship test.

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

*The motion **passed** with all in favor, 6-0.*

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- 2) Case # 4-2
 - Petitioner: 233 Vaughan Street LLC
 - Property: 233 Vaughan Street
 - Assessor Plan 124, Lot 14
 - Zoning District: Central Business A
 - Description: Install a bathroom in space designated for mechanical equipment.
 - Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 - 1. A Variance from Section 10.531 to allow a structure height of 57’3” for the habitable space of the building where 50’ is the maximum allowed.

DECISION OF THE BOARD

The Board acknowledged that the petition was postponed to the May meeting at the applicant’s request.

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- 3) Case # 4-3
- Minutes Approved 5-19-15.

- Petitioners: Dale W. & Sharyn W. Smith
Property: 275 Islington Street
Assessor Plan 144, Lot 8
Zoning District: Central Business B
Description: Clarification of previously granted variances regarding the construction of four multi-family residences and an addition to a rear building creating 14 residential units.
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 12±% open space where 14.1±% was previously granted and 15% is required.

Mr. Rheaume recused himself from the petition.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech representing the petitioner stated that the petition had gone through the Site Plan Review process. He passed out a packet to the Board that he said had been previously submitted to them in December. They originally had 5-foot sidewalks, but TAC placed a condition upon their approval and said that 8-foot sidewalks should be put in. Consequently, they had more sidewalk and less open space on the property. Some compressors also had to be added in the rear of the property that took up extra square footage. Attorney Pelech said that, in December, it was in the CBB District, where it was not required to have any open space unless it was a transition lot. Because they were in 200 feet of a residential lot, they now had to have 15% open space, and they would increase the open space to 12%. Attorney Pelech said that granting the variance would improve the neighborhood; all the neighbors supported it and it would increase the open space on the lot. He said it would not diminish surrounding property values because they already had the variance of 14% and it was not their choice to go down to 12%. TAC mandated that they have the wide sidewalk. Substantial justice would be done because they received all their prior approvals. If denied, it would be a hardship on the applicant because he would have to go back to TAC to put the 5-foot sidewalk back. Because the property was in a transition zone and Goodwin Park was across from it, he felt that what was proposed was much better than what currently existed. He introduced Mr. Joe Coronati and said he could go through the plans with the Board.

Chairman Witham asked what TAC's rationale was in going to an 8-foot sidewalk. Mr. Coronati replied that TAC had been reviewing Islington Street for renovation and the issue became the sidewalk alignment. The applicant had a 6'-wide sidewalk, and the walk got wider going toward downtown. Islington Street parking was going to switch sides and the walks were shrinking, so that was the purpose of the 8-foot sidewalk. However, the alignment forced some of it on their property, so it was more of an alignment issue.

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 variance as presented and advertised. Mr. Moretti seconded the motion.*

Mr. Mulligan stated that the petition had been before the Board a few times with minor variations, and given that the Board had already approved the same project prior to the change mandated by the Site Review process, he did not think that granting it would be contrary to the public interest or to the spirit of the Ordinance. The character of the neighborhood would be maintained, given that the project was previously approved and vetted by various land use boards. Granting the variance would also result in substantial justice because if it was denied, the applicant would have to go back to the drawing board and waste a lot of hard work. The values of surrounding properties would not be diminished because the same analysis as the last approvals carried over, and he thought the neighborhood would be improved. The unnecessary hardship involved factors having to do with the transitional nature of the zone. Goodwin Park was directly across the street and Islington Street was a factor, and the property bumped up against a residential zone, so there was an open space requirement where there normally wouldn't be. The property had unique conditions, and he felt that strict application of the open space requirement should not be applied to it. It was reasonable use and no loss to the public if granted.

Mr. Moretti said he concurred with Mr. Mulligan's comments and added that he believed that TAC had pushed the envelope by requiring the trip into the reduction of open space. He didn't see that it would make any substantial change to the project or to the street. Mr. Johnson stated that he fully supported the project and felt that the Board sometimes used the transitional zone as a hardship, and it was not something he bought into because the transitional zone was meant to mitigate and offset the dimensional differences in requirements. He said it was important not to set a precedent by saying that the CBB zone would not need open space requirements.

*The motion **passed** with all in favor, 5-0.*

4) Case # 4-4

Petitioner: Ellen S. Cohn Revocable Living Trust

Property: 124 Broad Street

Assessor Plan 134, Lot 19

Zoning District: General Residence A

Description: Construct 6'± x 14'6"± second floor addition.

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

1. A Variance from Section 10.324 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 4'± left side yard setback where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

Minutes Approved 5-19-15.

Mr. Rheume resumed his seat. The applicant Ms. Ellen Cohn said she wanted to build an addition to the bathroom for a separate shower. It would improve the 7'x9' bathroom by extending it. Although it would be five feet from her neighbor, it would not have an effect on them because it would be on the back of the house, away from the street view, and would have no new windows. Mr. Rheume asked Ms. Cohn if the setback dimensions that she provided were based on a survey. Ms. Cohn replied that the contractor measured them.

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 variance as presented and advertised. Vice-Chair Parrott seconded the motion.*

Mr. Rheume stated that it was a straightforward request and felt that granting the variance would not be contrary to the public interest. The small addition was to the back of a decent-sized building that faced away from the street, and it was unlikely to make major changes to the neighborhood's nature. The neighborhood had a lot of small additions. The spirit of the Ordinance would be observed because the applicant was asking for four feet and the main concern was light and air on neighboring properties, but an addition of one story would not affect light and air and the closest neighboring structure was a garage. Substantial justice would be done because the owner could fully utilize the bathroom and bring it into compliance with more modern standards. Granting the variance would not diminish surrounding properties and would enhance them. There were special conditions regarding the hardship criteria because the lot was unusual and the streets were not parallel. The odd shape of the property was a hardship and the proposed changes were reasonable.

Vice-Chair Parrott concurred with Mr. Rheume and said he had nothing to add.

*The motion **passed** with all in favor, 6-0.*

5) Case # 4-5

Petitioners: Patricia L. & Burton S. Russell

Property: 65 Mendum Avenue

Assessor Plan 148, Lot 11

Zoning District: General Residence A

Description: Construct a second dwelling unit above a detached garage.

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

1. A Variance from Section 10.513 to allow a second free-standing dwelling unit on a lot.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,787± s.f. where 7,500 s.f. per dwelling unit is required.

DECISION OF THE BOARD

The Board acknowledged that this petition was withdrawn by the applicants.

6) Case # 4-6

Petitioners: Kelly Whalen (Cioe), owner, Scott & Kelly Cioe, applicants

Property: 44 Melbourne Street

Assessor Plan 233, Lot 20

Zoning District: Single Residence B

Description: Expand third floor in existing nonconforming footprint.

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

1. A Variance from Section 10.324 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) A 4'± left side yard setback where 10' is required.
 - b) A 15'± front yard setback where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

The homeowner Mr. Scott Cioe stated that he had resubmitted some information to the Planning Department as there was no need for front setback relief. After measuring the distance from the property line to the edge of the foundation, he determined the distance was 32'. He only relief he needed and was requesting was for the 4' left side yard setback. The third floor would be expanded into a finished attic for recreational purposes. Photos showed the front and side of the house, and he said the other exhibits were preliminary design plans. Mr. Cioe stated that he wanted to keep some of the old roof line and hip angles. The roof would be gabled on the front and back with dormers added to the side, and they would bump up the roofline. Most of the surrounding houses had gabled roofs. Mr. Cioe outlined how all the criteria were met.

Mr. Rheaume stated that the Board normally liked to see floor plans for new additions, and he asked Mr. Cioe to describe what kind of activity would occur in the new space. Mr. Cioe replied that it would be one big open room with a small converted guest room behind it. It would include a desk for him and recreational areas for the children.

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 variance as presented and advertised. Vice-Chair Parrott seconded the motion.*

Minutes Approved 5-19-15.

Mr. Moretti stated that the Board should approve it. Granting the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed because the side setback was close, but the closest house was about 20-30 feet away, so the neighbor would not be affected by light and air issues. Substantial justice would be done because raising the roof would give the owner the use of the upper floor and also allow an office. Granting the variance would not diminish the value of surrounding properties because the change would be very tasteful and would maintain the look of the house. It would raise the value of surrounding properties. Mr. Moretti said that there would be a hardship if the owner was not able to utilize the upper floor of the house.

Vice-Chair Parrott said he concurred with Mr. Moretti comments. He added that it was a vertical expansion, with no change in the footprint so there would be no impact on the neighbors on either side which was a good thing as this was a narrow 50' wide lot. This was a logical and straightforward addition that he felt should be approved.

Chairman Witham stated that he would support it, with a minor hesitation. The house would become taller by raising the ridge, as the project was not simply adding dormers. He said he hoped that the final design would tame it down a bit.

*The motion **passed** with all in favor, 6-0.*

IV. OTHER BUSINESS

No other business was presented.

V. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 8:30 p.m.*

Respectfully submitted,

Joann Breault
Recording Secretary