

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

7:00 P.M.

**SEPTEMBER 22, 2015
Reconvened from
SEPTEMBER 15, 2015**

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Charles LeMay, David Rheaume, Christopher Mulligan, Patrick Moretti, Jeremiah Johnson

MEMBERS EXCUSED: Derek Durbin

ALSO PRESENT: Planning Department, Juliet Walker

Mr. Durbin was excused, and Mr. Johnson assumed a voting seat for the evening.

I. APPROVAL OF MINUTES

A) August 18, 2015

Vice-Chair Parrott recused himself because he wasn't present at the August 18 meeting.

*The minutes were **approved** with minor corrections by a vote of 6-0.*

II. OLD BUSINESS

A) Request for Rehearing regarding property located at 806 Route One ByPass

Vice-Chair Parrott and Mr. Mulligan recused themselves from the petition.

Chairman Witham stated that the Board received a brief statement from the abutter explaining the reasoning for the Request for Rehearing, and that he did note any new information that was presented or had any evidence that the Board erred in their procedural conduct that evening. Mr. Lemay agreed.

DECISION OF THE BOARD

*Mr. LeMay made a motion to **deny** the Request for Rehearing, and Mr. Rheaume seconded the motion.*

Mr. LeMay stated that the issues raised, like the allegation that the Board erred in granting the variance for allowing nine parking spaces to be located in the front yard, was not the case. He also brought up the issue

Minutes approved October 20, 2015

about the grandfathering of the business that was closed for two years, saying it was hard to argue the intent to abandon the use, given the nature of the building.

Mr. Rheume concurred with Mr. LeMay, noting that nothing new had been added that had not been already considered by the Board. The building had not been in full use for some time, and there were a number of properties on the bypass including the one right next door that had been closed at various times and then brought back that did not jeopardize the applicant's case in any way. He didn't see anything that was brought forward that the Board had not carefully considered, and he did not believe the Board made any error.

The motion to deny passed by a vote of 5-0.

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 9-2

Petitioner: Trisha Balestero

Property: 116 Austin Street

Assessor Plan 136, Lot 29

Zoning District: General Residence C

Description: Extend upper rear landing.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended or structurally altered except in conformance with the Ordinance.
2. A Variance from Section 10.516.40 to allow a left side yard setback of 3.5'± where 4' is required for an open porch/landing and stairs.
3. A Variance from Section 10.521 to allow building coverage of 38.31% where 37.96% exists and 35% is the maximum allowed.

Vice-Chair Parrott resumed a voting seat. Mr. Mulligan recused himself from the discussion.

SPEAKING IN FAVOR OF THE PETITION

Mr. Mike Carrey and Ms. Heather Balestero representing 116 Austin Street were present to speak to the petition. Mr. Carrey stated that the landing for the stairs in the rear of the building had previously been accepted by the Board and that he simply wanted to add a 3'x4' addition to that landing to make getting into the house easier.

Mr. Rheume noted that the Board had granted a fair amount of relief previously, and he asked Mr. Carrey to further explain the intended purpose of the add-on. Mr. Carrey replied that there would be more setback off the door as one came up the stairs and would provide a nice place to put a chair.

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, and Mr. LeMay seconded the motion.

Vice-Chair Parrott stated that the petition was a simple and straightforward request. Granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because it was clear that the small nature of it and its location in the back of the house would not have an adverse effect on anyone and would certainly have a positive effect on the house and the residents. The balancing test was clearly in favor of the applicant, and granting the variance would not diminish the value of surrounding properties. Vice-Chair Parrott thought it was hard to see that there would be any effect on surrounding properties because the change was small and logical and would be out of public view. As for the unnecessary hardship test, he said it was obvious that the height of the entryway above the ground due to the ground's slope was a special condition. He concluded that the petition met all five criteria.

Mr. LeMay stated that it was a small variance due to the side yard setback where the house was already along that line, so the relief requested was quite small.

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

2) Case # 9-3

Petitioner: Anthony G. Courts

Property: 190 Thornton Street

Assessor Plan 161, Lot 5

Zoning District: General Residence A

Description: Replace a 12'± x 14'± shed with a 24'± x 24'± two car garage.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be reconstructed except in conformance with the Ordinance.
2. A Variance from Section 10.570 to allow a right side yard setback of 3'± where 10' is required and a rear yard setback of 3'± where 15' is required.

Mr. Mulligan resumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

The owner Mr. Anthony Courts stated that he bought the house in 1998 and ran out of room when he married and had children. The house was one of the smallest on the street, and there wasn't enough room in the back to put the garage. The ground sloped down from the back of the house. He referred to the property sketch showing the back corner of the yard and said that the garage would be out of site from the street.

Chairman Witham asked Mr. Courts if he had looked at other locations and whether he had shared the project information with his neighbors. Mr. Courts referred to a photo showing the front of the existing shed and the driveway and said they would cut two feet off the front of the driveway, adding that it was the tightest area they could get. He also stated that the three neighbors in the corner approved. Mr. Rheaume said he could understand the three feet back from the rear property and thought the three feet from the side line could be moved back, but he realized that Mr. Courts would lose the ability to park vehicles in front of the garage. He noted that the additional height above the garage was substantial and asked whether it was open storage space, and Mr. Courts said it was. Mr. Mulligan noted that the drawing appeared to show a slab foundation, so there would be minimum excavation. He asked Mr. Courts whether he anticipated problems with mature trees on the site. Mr. Courts replied that some of the trees on the right side of the shed would have to be removed.

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, and Mr. Rheaume seconded the motion.*

Mr. Moretti stated that granting the variance would be not contrary to the public interest because no one from the public was present to speak against it and the neighbors had agreed to the design. The spirit of the Ordinance would be observed because, even though the shed was larger, the owner moved it off the property line and had access to maintain it, so he was doing what he could to make it right. Substantial justice would be done because the public and the neighbors had not spoken against it and it would increase surrounding property values. As to the hardship, the applicant had an odd driveway and needed the parking for his vehicle as well as room to make the turn and accommodate snow, so it was likely the only place to park the car.

Mr. Rheaume noted that the garage was pretty substantial at 24'x24' and was pushed onto one corner of the property. He understood that the driveway drove the garage to be in the back. He thought it could potentially meet the setback requirements on the right side yard of the property and understood the owner's desire for parking and maneuvering. He thought the driveway out in the back created the desire to have the garage placed in the back. From a light and air perspective, the surrounding properties as well as the owner's were quite a distance from where the garage would be placed, there was a fair amount of open space, and the neighbors had not come forward with concerns about light and air, so he believed the petition met all the criteria.

Vice-Chair Parrott stated that he would not support the petition because he felt that the two-car garage in that little area was not consistent with the second criteria of the benefit of the applicant not being outweighed by harm to the general public or substantial justice. He felt it was excessive, and even though the neighbors were supportive as good neighbors, he believed it would encroach on their space in general. Mr. LeMay said he was concerned about the side yard setback of three feet toward the property at No. 172 and thought it could be moved a few feet. He had no problem with the three feet off the back line but thought it could be moved a few feet away from the property line to conform more to the Ordinance.

Chairman Witham said that he had been unsure previously, but after getting to know the neighborhood better, he would support it. The neighbors supported it and it wouldn't go over the lot coverage. The existing driveway location and the slope of the land drove the location of the garage and it had a significant buffer with the abutters. He felt it was tight at three feet but saw no adverse effect. The house was very small, and he didn't feel that it should be the penalty for the garage.

*The motion **passed** by a vote of 5 to 2, with Vice-Chair Parrott and Mr. LeMay voting against the motion.*

3) Case # 9-4

Petitioners: Leonard S. & Wendy M. Cushing

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Replace existing 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 building or structure to be reconstructed except in conformance with the Ordinance.
2. Variances from Section 10.570 to allow the following for an accessory structure:
 - a) A 3'± left side yard setback where 10' is required.

- b) A 9' right side yard setback where 10' is required.
 - c) A 4' rear yard setback where 10.5' is required.
4. A Variance from Section 10.521 to allow 33% building coverage where 25% is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Mr. Leonard Cushing stated that he wanted to tear the garage down because it was infested with carpenter ants and not properly footed, and the roof was rotten. The foundation leaned to the south side of the property. He wanted to build the new garage in the same footprint, location, and measurements. The right side setback was nine feet where 10 was required, and measured to his neighbor's fence, was 11 feet to the house itself. As for the rear yard setback, the driveway was 19 feet to the road, so the garage did not sit at 4'2", and there was a full driveway before getting to the road, so it wasn't as imposing as it seemed. The driveway curb cuts were on the back of Sherburne Avenue, and every other house on the block had a nonconforming garage. He felt it would be good for everyone and would raise property values.

Mr. Rheume asked Mr. Cushing whether he would keep the gable roof, and Mr. Cushing agreed, saying that the only thing that would change would be on the north side, where the door on the house side of the garage would be moved to the side. Mr. Rheume asked whether the garage would be a two-car garage, and Mr. Cushing replied that it would not, although it would be oversized with a door and a single entry door. Mr. Rheume then asked Ms. Walker whether the 10-1/2' setback requirement was driving it, and she agreed, noting that she would send copies to all the Board members.

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, and Mr. LeMay seconded the motion.*

Mr. Mulligan stated that the petition was straightforward and a replacement in kind for a nonconforming and dilapidated structure. Granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance. It would not alter the essential characteristics of the neighborhood nor threaten the health, safety and welfare of the public. The garage would be the same height and dimensions, and everything would just be new. Substantial justice would be done because the loss to the applicant would be severe because of the required conformance and current setback requirement and would not be outweighed by any public benefit. Granting the variance would not diminish the values of surrounding properties but would encourage the upgrading of the property and the structure, which would positively affect values of surrounding properties. Literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property, the frontage on both avenues, and the existing structures that were currently nonconforming. There was a fair and substantial relationship between the purpose of the setback requirement as applied to the property, and he felt it was a reasonable use of the property that would be upgraded and enhanced. He stated that the petition met all the criteria.

Mr. LeMay concurred with Mr. Mulligan and said he had nothing to add.

*The motion **passed** with all in favor, 7-0.*

Petitioners: Richard and Janice Henderson

Property: 284 New Castle Avenue

Assessor Plan 207, Lot 73

Zoning District: Single Residence B

Description: Replace existing entry 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 or structure to be extended or structurally altered except in conformance with the Ordinance.
2. A Variance from 10.516.10 to allow a front yard setback of 9'2" ± where 26' is required.
3. A Variance from Section 10.573.20 to allow a rear yard setback of 11' for an accessory structure where 13.5' is required.

SPEAKING IN FAVOR OF THE PETITION

The architect Ms. Anne Whitney stated that New Castle Avenue was an unusual situation because everything was close to the street, but on the east side of the structure, the buildings were closer to it. To the left, it went into a more suburban neighborhood where the buildings were more than 30 feet back. The hardship was caused because the structure was close to the street and the current setback, and they were actually pushing it back. They would remove the current front entry's bump-out and push the structure back about 20 inches. They would also add a bay within that 26-ft. setback. The two-story addition at the rear of the building was within the 26-ft. setback, and the entry porch would be pushed back 20 feet and replaced. Ms. Whitney noted that she had received approval from the Historic District Commission (HDC). Regarding the 11 feet, she said she could either eliminate it or move the garage another foot and a half.

Ms. Walker brought up the definition of the rear lot line, noting that it was usually interpreted as the opposite of the front line, and she said it was up to the Board to determine it.

Ms. Whitney went through the criteria, saying that the petition would meet all of them. Mr. Rheume remarked to Ms. Walker that the 9-1/2-ft. right side yard setback appeared to violate the 10-ft. requirement but was allowed to be half that, and he asked whether it would be an issue. Ms. Walker said it would be fine.

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 noted that the advertised garage had been withdrawn.

*Mr. LeMay made a motion to **grant** the variance as presented and advertised, with the stipulation that the garage be moved forward so that it would not require a variance. Vice-Chair Parrott agreed and seconded the motion.*

Mr. LeMay stated that it was a simple petition and that the most egregious incursion into the zoning was the front of the house, which was reduced a bit with the variance. He stated that granting the variance would not be contrary to the public interest and would not change the essential characteristics of the neighborhood or threaten the public health, safety, or welfare or injure public rights. Substantial justice would be done and the benefit to the applicant would not outweighed by harm to the public. Values of surrounding properties would not be

diminished because the project would maintain the neighborhood in a nice way. Literal enforcement of the Ordinance would result in unnecessary hardship to the applicant because the hardship was that it was a pre-existing nonconforming use.

Vice-Chair Parrott concurred with Mr. LeMay, saying that the changes were logical for the property, and the way they were situated would have no adverse effect on adjacent properties, considering how those were all oriented. He felt that the petition passed the five criteria.

The motion passed with all in favor, 7-0.

5) Case # 9-6

Petitioner: Unitarian Universalist Church

Property: 206 Court Street

Assessor Plan 116, Lot 34

Zoning District: Mixed Residential Office, Character District 4-L1

Description: Construction of an addition with related parking.

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

1. A Special Exception under Section 10.440, Use # 3.11 to allow a religious place of assembly and educational uses where the uses are only allowed by Special Exception.
2. A Variance from Section 10.5A41.10A to allow the following:
 - a) A 1' right side yard setback where a minimum 5' setback is required.
 - b) A 1' left side yard setback where a minimum 5' setback is required.
 - c) A rear yard setback of 3' where 5' is required.
 - d) Building coverage of 71.78% where 60% is the maximum allowed.
 - e) Open space of 21.3% where 25% is required.
3. A Variance from Section 10.1112.30 to allow 1 off-street parking space to be provided where 53 parking spaces are required.
4. A Variance from Section 10.1114.32 to allow vehicles accessing the parking area to back into or from a public street.

Mr. Mulligan and Mr. Johnson recused themselves from the vote.

DECISION OF THE BOARD

Vice-Chair Parrott made a motion to postpone the petition, and Mr. Moretti seconded.

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

6) Case # 9-7

Petitioner: Tanner Bridge Development LLC

Property: 40 Bridge Street

Assessor Plan 126, Lot 52

Zoning District: Mixed Residential Office, Character District 4

Description: Parking in support of the construction of a mixed-use building.

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

1. Variances from Section 10.1114.21 to allow the following:
 - (a) The depth of an off-street parking space to be 18'± where 19' is required.

- (b) Maneuvering aisle widths of 12' to 18' for access ramps and 10'± for the garage entrance where 22' is required for both.

Mr. Johnson recused himself from the discussion.

SPEAKING IN FAVOR OF THE PETITION

Attorney Stephen Roberts from Hoefle, Phoenix, Gormly and Roberts, P.A. representing the owner Tanner Bridge Development LLC was present to speak to the petition. He introduced Mr. John Chagnon of Ambit Engineering, Mr. Steve McHenry of McHenry Architects, and Mr. Anthony DiLorenzo of Tanner Bridge Development LLC. Attorney Roberts stated that the plan was to build a 3-story, mixed-use building. He discussed the parking situation, saying that the building configuration required shortening the parking spaces from 19 feet to 18 feet and changing the maneuvering aisle that was normally 22 feet. Because there were only 10 parking spaces for the private residents, the ramp leading up to the single garage door varied in width from 18 feet to 12 and then to 10 feet. Attorney Roberts noted that the HDC had approved it and liked the design but didn't want the 22-ft. wide garage door, so they were asking for minor relief to allow 18-ft. deep parking spaces instead of 19 feet and a ramp that would go from 18 feet to 12 feet and then to 10 feet.

Mr. Chagnon referenced a Drawing C4 showing Bridge Street on the northeast side of the property, and he stated that the parking lot on Bridge Street narrowed down to an entrance that would come into the parking area that would be below grade. The site had to have parking, and the site sloped and gave them the ability to put the parking on the north side of the ramp. The ramp would be at the lowest point along the street and would start at 18 feet and then narrow down to 12 feet in width. The garage door would be 10 feet wide, leaving a sufficient area between the garage door and the edge of the street line so that a car could wait for the opening. Mr. Chagnon stated that he needed a variance to utilize their proposed system, noting that the distances in the design allowed for line of sight as well as sufficient time, space, and controls such as mirrors and lights to warn people of approaching vehicles. The ramp was needed to get to the lower level, and the 10 spaces were more than enough for the building use. Since the parkers were residents, they'd have no problem using the parking spaces and there would be no issues with the movements, size of the spaces and the ramp.

Mr. Chagnon stated that both variances would not be contrary to the public interest and would observe the spirit of the Ordinance because shortening the spaces and making the ramp narrower would not affect the public. Granting the variances would not alter the essential characteristics of the area because it was an urban streetscape and a transition area. The public would not be adversely affected and might be favorably affected because the project would reduce the vacant lot and a single garage door was more consistent with surrounding homes. Mr. Chagnon explained how granting the variances would meet the criteria for substantial justice and would not diminish property values. As for the hardship factor, he said it was a vacant lot and they were allowed zero setbacks on the front and five on the side. To use the building efficiently, they needed off-street parking that could only be put on the subsurface, and they needed relief for the shorter stalls and narrower ramp.

Mr. Rheume asked where the trigger would occur that would light up the sign for people trying to get in. Attorney Roberts said it would be at the bottom and the sign would stay 'stop'. Mr. Rheume asked if it would be at the base of the ramp, and Attorney Roberts agreed. Mr. Rheume noted that Bridge Street was heavily traveled and that there could be a concern of how much room was available to pull over for the vehicle waiting to get into the parking lot. Attorney Roberts replied that there was public parking on that side of Bridge Street that would allow a driver to pull to the side of the road. Mr. Rheume said that the driver exiting the garage would realize that there was a car trying to get in, and Mr. Chagnon agreed.

Vice-Chair Parrott referred to Sheet 3.2 and asked Attorney Roberts what the notations below the drawings meant, such as the width of the door and capacity. Attorney Roberts replied that they were architectural terms. Mr. McHenry explained that the notations referred to the capacity by code of the number of persons who could occupy the space, given the square foot per person, the minimum width of the exit door, and the total capacity per space by code per square foot. He further explained how they were calculated. Vice-Chair Parrott asked

why the factors were different for the first floor, and Mr. McHenry replied that the space types were different because the parking garage was different, proving that the exit doors were wide enough to give egress.

**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, and Mr. Mulligan seconded the motion.*

Vice-Chair Parrott stated that it came down to a minor request. The standard space for that type of parking at that angle was 19 feet, and the applicant was asking for a 1-foot reduction, which wasn't much. Standard cars were about 16 feet long, with many other cars smaller, so given that, combined with the 22 feet of width, would allow plenty of parking and maneuvering space. It was such a small number of parking spaces that he thought it unlikely that people would pull in and out at the same time, and if they did, the site lines and well-lit area should not present a problem. The design was logical to get in and out, and there were driveways. With eighteen feet at the top of the parking lot level going out to the street and narrowing down for a short distance, he thought it was most likely that the site would be sufficient and if not, the other mechanisms as discussed would cover it.

Vice-Chair Parrott stated that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because it was hard to see any public interest, given that it was on private property and there was no reason for the public to go in and out, and the spirit of the Ordinance allowed people to have reasonable use of their property. Substantial justice would be done because the public would not be inconvenienced or harmed. Granting the variance would not diminish property values because it had been proven that off-street parking was advantageous to everyone, including the surrounding properties, and it would be out of sight. As for the special conditions, Vice-Chair Parrott said there would be no room for surface parking, and above-ground parking was not advantageous for aesthetic reasons, so the arguments leaned towards underground parking being desirable and accommodated. For all those reasons, it satisfied the five criteria.

Mr. Mulligan stated that the relief requested was to allow for slightly shorter stall lengths and for a narrower maneuvering aisle. He said he had lived in a few arrangements where there were shared driveways and nothing as elaborate as what was proposed, but he had never had a situation of conflict with residential users coming and going. He said that it self-regulated and felt that perceived concerns about maneuvering the narrow ramp would not be realized. The project was designed thoughtfully to adapt, and he didn't see a detriment to the public if it was granted. The HDC had given its stamp of approval, which indicated some level of public gain to the project as proposed, so he was comfortable that the criteria were all met. He agreed that there was an unnecessary hardship because of the vacant lot that had dilapidated and underperforming structures on it that would require some relief if the applicant was to produce a modern mixed-use development. He did not believe that the general public would have any real interest in how the parking spaces were used and that there was no fair and substantial relationship between the purposes of the Ordinance as applied to the property.

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

NOTE: The petition for Case #9-9 was read out of order and heard by the Board prior to Case #9-8

7) Case # 9-8

Petitioners: Matthew E. & Leslie G. Allen

Property: 143 Brackett Road

Assessor Plan 206, Lot 16

Zoning District: Single Residence B

Description: Construct 16' x 16' rear screened porch.

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

1. A Variance from 10.521 to allow a rear yard setback of 23.6'± where 30' is required.

Mr. Johnson resumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

The contractor Mr. Tyler Jackson stated that they were building the home and adding a two-car garage with a master suite above it. The screened porch was on the back side of the house and could not be seen from the street. He said the lot was large, and adding the porch would increase lot coverage by 8%, which was well below the maximum lot coverage permitted.

Mr. Mulligan asked what the side yard setback was, and Mr. Jackson replied that it met all the other setbacks but was just the rear yard setback. He said the lot was enormous but there wasn't a lot of space behind the house. Mr. Mulligan noted that the positioning of the proposed porch would only have an effect on the abutter to the left but was still within the setback. He felt it was a shame that there was no way that the structure could be moved elsewhere, seeing that the lot was so large, but he recognized that it met the setback on that side. Mr. Tyler replied that the neighbor had a private set-up and a lot of greenery as a barrier.

**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, and Vice-Chair Parrott seconded the motion.*

Mr. Mulligan stated that what was proposed would have the most effect on the left neighbor but would not violate the side yard setback affecting that property. Since it did not come close to the lot coverage requirements, he felt that it was a reasonable project. The applicant was asking for rear yard relief from the setbacks and there was a large amount of green space between the property's structures and the abutting property on South Street. Granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because the essential characteristics of the neighborhood would not be affected and the health, safety and welfare of the public would not be diminished by a fairly modest rear yard setback. It would result in substantial justice, and the loss to the applicant outweighed any benefit to the general public if the Board held the line on the rear yard setback. There would be no intensive use because it was a screened-in porch on the back of the property and would not be visible to the public on the street nor have significant impact on the rear yard setback property due to the wooded area between the two. Granting the variance would not diminish the value of surrounding properties because they would not be impacted at all. The significant renovation of a small structure would make it more valuable and would positively affect the values of surrounding properties. Relating to the unnecessary hardship criteria, the special conditions were that the lot

was very large and irregularly shaped and sort of on a dead-end street. The rear yard setback was appropriate and reasonable for a screened-in porch and it fit in well.

Vice-Chair Parrott concurred with Mr. Mulligan and added that the next-door property had a similar porch, but it was on the far side from the proposed structure, so there would not be any interference by having two porches close to the property line.

The motion passed with all in favor, 7-0.

8) Case # 9-9

Petitioners: Robert W. & Constance M. Bushman Revocable Trusts 2000

Property: 34 Marne Avenue & 43 Verdun Avenue

Assessor Plan 222, Lots 33 & 34

Zoning District: General Residence A

Description: Lot line relocation.

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

34 Marne Avenue:

1. Variances from Section 10.521 to allow a lot area and a lot area per dwelling unit of 7,461± s.f. where 7,500 s.f. is required for both.

43 Verdun Avenue:

2. A Variance from Section 10.570 to allow a left side yard setback of 6.9' where 10' is required for an accessory structure.
3. A Variance from Section 10.570 to allow a rear yard setback of 5'4" where 15' is required for an accessory structure.

SPEAKING IN FAVOR OF THE PETITION

Attorney Jack McGee of Flynn and McGee PA representing the applicant explained the petition to the Board, saying that the owners owned two properties, one on 34 Mame Avenue and one of 43 Verdun Avenue. He went through the petition and explained the reasons why the variances were needed, emphasizing the lot line and barn issues. He said the petition would meet all the criteria.

Mr. Rheume noted that, in all cases where there was such a slight request for relief, he asked whether it was truly necessary. He inquired about the 39-s.f. one. Attorney McGee stated that he had asked the owner about moving the lot line a bit, but the problem was that it would impede on the driveway at the bottom level of the barn and felt that it would be unreasonable to contour 39 square feet to make up the Ordinance, which was why they were asking for the relief.

Mr. Rheume noted that the drawing showed the gravel parking crossing over the new boundary line and asked whether there was intent in the new property definitions to recognize it by a mutual easement that said traversing across either space was acceptable. Attorney McGee said there was not. He discussed a bump-out issue on 34 Mame Avenue and said that straight lines were preferred. He also noted that the gravel parking lot was actually a driveway for the use of the barn. Mr. Rheume noted that the drawing showed it on both sides of the property line and said it wasn't a big deal for him but cautioned that the Planning Board might look at it differently. Attorney McGee replied that he would discuss it with the surveyor.

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. Walker clarified the setback relief because both were listed as 5.4 feet and 6.9 feet, and she thought it was unclear as to what point was being measured from. She said that 5.4 feet was the closest point and that no relief was applied for 6.9 feet. She told the Board that it was up to them, but it was really a 5.4-ft. rear yard setback.

*Mr. Rheume made a motion to **grant** the variance as presented and advertised, and Mr. Johnson seconded the motion.*

Mr. Rheume stated that there were two existing lots with three structures scattered over them, and he felt that it would be okay if it were one large lot, but they were two separate lots. He said that one lot or the other would have to claim the middle building with the barn and felt that it was reasonable for the owners of one lot to redefine the property line to encompass the barn for their use while still maintaining the potential use of the second dwelling unit. He felt that the request was reasonable. One of the relief variances asked for was half of the 1% required, which was very minimal. Whether or not the setback requirement was 10 feet or 15 feet and viewed as a side property line or a rear one, he thought it was reasonable percentage-wise.

Mr. Rheume stated that granting the variance would not be contrary to the public interest because there were two existing lots and the applicant was not trying to create two lots where there was one. The applicant was redefining where the property line occurred in order to move an existing structure from one property to another, and the public would not notice a difference because three structures would still be there. It was not a major concern who used the barn. The spirit of the Ordinance would be observed because the variation of the overall lot size was minor. As for the setback relief, what was asked for was 50% to 2/3 of what was required, and the applicant had tried to separate it out as the best compromise without affecting light and air issues with adjoining properties. Granting the variance would do substantial justice because the owner of both properties would redefine and space and make it more useful. It would not diminish the value of surrounding properties because it would not affect the neighbors, who were in favor of the project. As for the hardship test, there were three pre-existing structures and already an issue with encroachment on the setbacks, so it was shifting and improving the setbacks, which was a fair and reasonable use of the property.

Mr. Johnson concurred with Mr. Rheume and said he had nothing to add.

*The motion **passed** with all in favor, 7-0.*

9) Case # 9-10

Petitioner: DiLorenzo Lafayette Ledgewood RE LLC

Property: 581 Lafayette Road

Assessor Plan 229, Lot 8B

Zoning District: Gateway

Description: Allow a restaurant and market with associated parking.

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

1. A Special Exception under Section 10.440, Use #9.52 to allow a restaurant with 492 seats where 250 to 500 seats are allowed by Special Exception.
2. A Variance from 10.593.10 to allow a restaurant to be located 92.1' from a residential district where 200' is required.
3. A Variance from 10.531 to allow 16.5% open space where 11% exists and 20% is required.
4. A Variance from Section 10.1112.50 to allow 154 off-street parking spaces where 184 exist and 132 are the maximum allowed.

5. A Variance from Section 10.1113.20 to allow parking in the front yard or between a building and a street for 34 spaces where 38 exist and 0 spaces are permitted.
6. A Variance from 10.1113.10 to allow 28 existing and 30 proposed off-street parking spaces to be partially located on a lot separate from that of the principal use.
7. A Variance from Section 10.1114.21 to allow 10 off-street parking spaces to be 17.5' in length where 19' is required.
8. A Variance from 10.1124.20 to allow off-street loading or maneuvering areas to be 87.7' from an adjoining Residential or Mixed Residential District where 100' is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix of Hoefle, Phoenix, Gormly and Roberts, P.A. stated that he was representing the applicant. He introduced Mr. Steve Roberts, the owner of Tuscan Market, Mr. Joe Faro, Mr. John Chagnon of Ambit Engineering, the applicant Mr. DiLorenzo, and the architect Ms. Erica Desrochers.

Attorney Phoenix stated that the project team met with the Planning Board and TAC several times. He explained that the open space relief would go from 11% to 16-1/2%. The second relief was for parking, and the setback variances were necessary due to the apartment complex behind the property and the requirement to have certain distances for the use and loading areas. Attorney Phoenix stated that the architectural plans were in progress and the preliminary layout of the restaurant as well as the façade weren't finalized. He discussed the green space and the required buffers and showed the distance from the edge of the parking lot. Referring to aerial photos of the layout, he remarked that almost every lot in the vicinity had parking in front of the building and in front of the property line, so the relief requested would be consistent with the area.

Mr. Chagnon showed the site plan and existing conditions. He said the parking space count was higher and more irregular than what they were proposing, so they were forced to repurpose and restripe the spaces or they would lose some. The proper line cut through some of the parking spaces, and part of the relief was for maintenance of those spaces. Mr. Chagnon noted that the roadway had been recently reconfigured and there was a large space between the new sidewalk and the edge of pavement on Lafayette Road. He then referred to the Zoning Board application plan, saying that the site would be accessed from Ledgewood Drive and would have two curb cuts and two in-and-out entrances and exits. He said it could change after the Site Review process because the City wanted the north drive to be only one way in, but it wouldn't affect the parking and requested relief. Mr. Chagnon stated that the existing building would be renovated in place, with an addition to the south and to the north. The parking layout would include 24 spaces of parking along the front, parking on the western side, and an aisle with spaces on each side on the south of the building. Sidewalks would be brought in from the surrounding network, and there would be considerable green space along Ledgewood Drive.

Mr. Chagnon stated that the special exception was to allow the restaurant to be over the size requirement. He discussed Criteria #4 related to not creating a traffic safety hazard or increase in congestion, noting that they did a trip generation calculation showing that the restaurant and market would generate weekday p.m. peak hour trips of 130. He stated that it would not be a burden to the traffic network because it would only increase it by 3% and noted that it would also be reviewed by TAC. There would be no significant increase of water runoff because they would reduce the impervious area on site and increase the open space from 11% to 16-1/2%. Related to the variance requests, Mr. Chagnon said they needed to install a loading area, which would be away from the street side and within 100 feet of the property to the south and screened appropriately. The building would be repurposed and a large space would be left in front of it that he felt should be re-used for much-needed parking. He said the green space would keep the parking away from the street.

Mr. Rheume stated that the site plan showed parking spaces along the Bowl-O-Rama building, and he noted that an application that had come before the Board to convert that end of the building to a walk-in care clinic

had received a waiver to allow the placement of a diesel generator. He asked Mr. Chagnon whether or not his plan was compatible. Mr. Chagnon replied that he was showing what presently existed and not what was approved and that he had not known about the clinic. He said TAC was aware of the need to create the 24-ft. aisle adjacent to the parking spaces and that they should be able to accommodate it. Mr. Rheume asked whether there was a concern or formal agreement with the State about exercising their use of the State property line. Mr. Chagnon said they would work with the State and would create space outside of the property. They were also in touch with the Department of Transportation. Mr. Rheume asked if there was a concern with the City waiving their claim to the existing easement, and Mr. Chagnon replied that the easement was the apartment owner's, who was working with them to release the easement. He said it wasn't necessary because Ledgewood Avenue had been moved over and it wouldn't impact utilities. Mr. Rheume asked about the short parking spots that were 17-1/2 feet and whether they could be limited to compact cars only. Mr. Chagnon said they could consider it and thought the grade between the edge of the parking lot and sidewalk was flat enough that the cars could hang over it a bit.

Mr. Rheume also questioned Mr. Chagnon's trip calculations, noting that his numbers were different from Plan #P1. Mr. Chagnon replied that it was early in the process. Mr. Rheume asked about potential impacts from a traffic standpoint since Ledgewood Drive now connected onto Lafayette Road, and he and Mr. Chagnon discussed the traffic queue and potential backup. Mr. Chagnon said that it would be studied at TAC and that the right turn was legal. Easements were granted when the property was subdivided, allowing people to drive through the whole plaza. Mr. Rheume asked whether the existing foundation would be re-used, and Mr. Chagnon said that the walls would remain. Ms. Desrochers added that the exterior loading walls would be kept and they would re-use the existing roof structure as much as possible. Vice-Chair Parrott noted that the photo showed a second floor, and he asked whether they would build up at all. Ms. Desrochers replied that they would not add a second floor but would look at an existing mezzanine on the cinema. They also wanted to add parapets at the perimeter. She assured Vice-Chair Parrott that all the available space would be utilized.

Attorney Phoenix reminded the Board that the facts relating to the property made it unique, such as the setbacks and residential and loading dock location that could not be changed. The 154 parking spaces were a reduction of 30 spaces from the original 184, and the reduction was to meet aisle widths, turning radii, and parking space size. Two parking variances were required due to the State land and the short parking spaces. He also reminded the Board of the deeded right-of-access and parking for Bowl-O-Rama and the need to connect the two lots. Attorney Phoenix went through the criteria and stated that the project would meet them unless they didn't apply. He also stated that the project would meet the Special Exceptions criteria.

Mr. Johnson noted the multiple programs inside the building and the potential for overlap of usage regarding the parking spaces from the quantity of people using the market and dining at the same time. Mr. Faro agreed that some of that would occur and hoped it would help 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 opened it up for discussion and stated that the application was an overall good one, and he thought the project would be an improvement to the property as well as a good use of it. He referred to the parking between the primary building and the street and noted that the intent of the Zoning Ordinance for new construction was to push the buildings forward and make the streetscape friendlier and put the parking in the back. He said the applicant indicated that they would re-use the building, so there was a justification to say that, since the applicant would re-use an existing building, it would give them the relief to put the parking in the front, and he believed that the applicant had done that. Mr. Rheume said his major concern was the traffic and,

through the change in use and the change in the configuration between Ledgewood Drive and Lafayette Road, he felt that it could create traffic jams for people making left-hand turns onto Lafayette Road. He thought perhaps traffic could be encouraged to take advantage of their right to traverse over the two adjoining properties to get to the light on Lafayette Road and make easy left-hand turns. He believed that TAC and the Planning Board could work out a reasonable solution.

Chairman Witham said he had anticipated variances for getting buildings along the street coming before the Board but said it wasn't as if the building could be picked up and moved up front. He thought the intentions were good but were 30 years too late, so the Board was stuck having to choose which applications they wanted to grant variances to. The re-use of the building made sense, and he felt that traffic issues could be handled by TAC but begged the question of whether or not they would allow the least minimal impact use. When the lot was in better shape, people crossed over the lots, and he thought that might occur again. Mr. Rheume added that the existing streetlights would tend to make people make the left onto Ledgewood Drive and cross the parking lots, but his main concern was the traffic back-up and whether the apartment dwellers would get stuck in traffic jams. The Board further discussed it and concluded that they could express their concerns to the Planning Board or to TAC or let the applicant work through it with them.

Mr. LeMay stated that when the State redesigned the intersection, they were not blind to the cinema and the number of parking spaces. The applicant had said that the traffic impact would not be substantially different than when the building was a cinema. Mr. LeMay discussed it further and said he suspected that the traffic engineers had anticipated the traffic load and that TAC had the latitude to take care of it, based on the design.

*Mr. Rheume made a motion to **grant** the special exception and the variances as presented and advertised, and Mr. LeMay seconded the motion.*

Mr. Rheume addressed the Special Exception criteria, stating that it was allowed by the Ordinance, and hazard to the public or adjacent properties or any fire and toxic issues were of minimal concern. There would be no detriment to property values in the vicinity and no changing of the essential character of the area because it was primarily a business district that abutted an apartment complex, and it had always been and would continue to be the same set of characteristics. The location and scale of the building and structure would not change tremendously, and there would be no odor, smoke, gas, or pollution issues. The Board had discussed the creation of a traffic safety hazard and, although it was a concern, they felt that TAC and the Planning Board could work it out. There would be no excessive demand on municipal services because the project would not provide any more stress on those than a cinema would. There would be no significant increase of runoff because there was already a parking lot and the applicant would add more green space and improve it.

Mr. Rheume then addressed the variance criteria, stating that the most concerning issue was allowing the restaurant to be located 92 feet from a residential building where 200 feet was required. He felt that the restaurant use was appropriate for the location, so they were not overstretching the intent of the Ordinance. The restaurant use would be more compatible in a residential area than some other uses that had such large setbacks. Granting the variance would not be contrary to the public interest because what used to be a business area with lots of traffic would be a restaurant, and the public had no interest in the change of the character of the neighborhood. It would observe the spirit of the Ordinance, in terms of distance from the residential district and the loading and maneuvering area being 87 feet where 100 feet was required. The Board had discussed the parking between the street and the building and moving the buildings forward, and the applicant would re-use the building, so it was acceptable. The interchange and the use of parking for many different users would increase uses for all the businesses. Parking would be stretched to the limit, so he agreed that the applicant needed as much parking as reasonable while still allowed open space. It would improve the situation and meet the spirit of the Ordinance. Granting the variance would do substantial justice because it would make full use of a dilapidated structure, bring vibrancy back to the area and benefit the owner and the public. It would not diminish the value of surrounding properties because it would not be a major change in use and was unlikely to change property values in any areas. In fact, it might increase them. The hardship was related to the existing

structure and the parking layout, and the owners were trying to take advantage of what presently existed. The business use butted up against a residential area, which was another hardship.

Vice-Chair Parrott concurred with Mr. Rheaume and added that the area was already a congestion point, but it would be one with or without the development. He felt that the development would be an excellent re-use of a derelict and ugly building and would be a sharp upgrade. The traffic went through there at different times, and he knew that it varied tremendously throughout the day and the season, but he didn't think it would make a major impact on what was already there. People who regularly traveled up and down the road would know other alternatives to get around the congestion. He sensed that the use would be variable enough in terms of volume throughout the day and the week that it would not be a burden at any given time, and he believed that the Board could and should approve the application.

The motion passed with all in favor, 7-0.

10) Case # 9-11

Petitioners: Paul E. Berton & Jane A. Ewell Living Trusts

Property: 482 Broad Street

Assessor Plan 221, Lot 63

Zoning District: General Residence A

Description: Replace existing structure with 4 attached townhouses.

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

1. A Special Exception under Section 10.440 to allow four attached townhouses (four dwelling units) in a district where they are only allowed by Special Exception.

Mr. Mulligan recused himself from the petition and left the meeting.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix of Hoefle, Phoenix, Gormly and Roberts, P.A. representing the applicant introduced the owner Mr. Paul Berton, the site plan engineer Mr. Mike Siebert and the appraiser Mr. Vern Gardner. He told the Board that it was a special exception with no variances required and that it met all the requirements. He noted that, because the zoning code had changed, the units were no longer permitted without special exception. He also noted that the area had 40 lots fronting Broad Street, 35 of which were nonconforming in some way. He said that 36 lots required backing out on the street and that seven were multi-family lots. Of the 64 residential homes, 34 were multi-family and 30 were single residences.

Mr. Gardner stated that it had to be determined whether or not properties in the neighborhood would experience loss in market value as a result of the project. It was a 3-step process, which he described, and he stated that there was no obvious loss value in all cases. Mr. LeMay noted that some of the sales Mr. Gardner referred to were 12 years old and asked whether they were old for an appraisal. Mr. Gardner replied that when a financial transaction was added, the person requesting the appraisal wanted a certain timeframe, but for something like the project, the appraiser weighed the environment and made a time adjustment. Vice-Chair Parrott asked Mr. Gardner about the age range of the structures on both sides of the street. Mr. Gardner replied that they were about the same. Vice-Chair Parrott noted that the buildings had been the same for a long time and asked whether or not there was a difference between an established sales and an established neighborhood, meaning that all Mr. Gardner's work was looking back in an established area in history, not an area that was changing. He asked if there were data showing what was being proposed under a radical change. Mr. Gardner replied that the proposed house façade was complimentary to what existed and tried to mirror the existing neighborhood. Vice-Chair Parrott concluded that there was no difference between a house fronted on Broad Street and a house in someone's back yard, and Mr. Gardner disagreed, saying they had a proposed use similar to the existing use.

Attorney Phoenix handed the Board three MLS listings that Mr. Gardner had mentioned regarding sales on the street. He stated that a duplex was permitted on the site by right, and they were asking for four units instead of two. He noted that the old farmhouses were over 100 years old and were single-family homes that had been converted to multi-family use, and he added that the neighborhood had changed over the years from 40 single-family homes and that there were more apartments on the street than single homes. He described how the front setback of the building was designed to match the apartment building to the left as well as the front location of the existing home. Their open space was very high, and lot coverage was very low compared to almost every house on the street. The rear setback was 62 feet and went up to 75 feet. He noted that the proposal had all off-site parking. He went through the special exceptions and said they would meet all the criteria.

Mr. Moretti asked how old the existing building was. Mr. Berton replied that it was 107 years old. Vice-Chair Parrott referred to the landscaping and traffic patterns and said that Drawing L1 Exhibit 9 showed the pavement. He asked what percentage of the lot was proposed to be paved. Mr. Siebert replied that the open space on the site was 55% and the building coverage was 16-1/2%. Vice-Chair Parrott stated that it looked substantial, so there had to be a lot of pavement and lots of impervious surface, given the orientation of the houses. Mr. Siebert said that about 20% was the pavement. Attorney Phoenix added that the pavement was permitted.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Peter Weeks, the PGW real estate consultant on behalf of the residents of Broad Street and Pinehurst Road, stated that about 16 people in attendance were in opposition. (The people stood). Mr. Weeks showed photos of existing homes and the subject property. He stated that he had presented a letter to the Board from the residents who were opposed to the request for a Special Exception. He stated that one of the opponents' concerns were that the project would change the essential characteristics of the neighborhood because, even though there were multi-family residences on Broad Street, they had been there for years and were done when the Zoning Code allowed it. The Zoning Code had changed over the years. A 160-ft. building was the same size as the America Hotel on Woodbury Avenue, and it was being proposed on a predominantly single-family home street. He stated that no other building was 160 feet long, and the structure would change Broad Street. The project doubled the amount of units permitted and added more parking. Mr. Weeks said the City Council changed the Ordinance in 2014 so that projects of that size would not be automatically granted and would protect the neighborhoods. He went through the requirements and said that the 160-ft. building would be out of place in the neighborhood. The opponents did not feel that the appraisal was relevant for granting the Special Exception.

Mr. Rheame stated that one of the homes in the photos had three residences next to the project that were substantial in size, and he asked how it integrated into the neighborhood. Mr. Weeks replied that it was a multi-family home and was not 160 feet long and did not change the neighborhood's character because it looked like part of the neighborhood. Chairman Witham stated that the Zoning had changed and that when the project first came before the Board, it was four separate structures. He thought the Zoning change was in reaction to that. He stated that, as part of the recent Zoning change, 160 feet was allowed, although he agreed that 160 feet was a long building. Mr. Weeks argued that just because the building was allowed, it would still change the character of the neighborhood, so it should not be allowed.

Mr. Henry Mellynychuk of 458 Broad Street stated that he was a direct abutter and that the building would change the neighborhood a lot. He was concerned about the amount of pavement and the roof area. He also noted that a lot of water would go to his house and that his property value would suffer.

Ms. Grace Sullivan of 125 Pinehurst Road stated that she had great concerns about their privacy and what the building would do to the neighborhood.

Mr. William Ehler of 153 Pinehurst Road stated that the structure would be an additional burden in regards to trash. He asked whether they would have a dumpster or make arrangements for pickup. He was also concerned about runoff and felt they would receive additional water from the property's pavement and building.

Mr. Gary Garneau of 517 Broad Street said he was concerned about additional vehicles because the house had 22 rooms, whereas it was originally a duplex.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix stated that the home had stood alone back in 1914, so the entire neighborhood had grown. He directed the Board's attention to his photos, noting that the building was much larger than any other single-family home on the lot. He felt that comparing the building to the American Hotel was unfair because the hotel was a multi-square box and the structure's design was tasteful and would fit into the neighborhood.

Mr. Siebert addressed the storm water issue and said they had considered how much runoff would go off the site and also looked at rain gardens and did test bed analyses. They were confident that they could collect and treat all the runoff with the impervious surfaces they intended to add. Mr. Rheume asked about trash removal and snow removals plans. Mr. Siebert replied that the owners would bring the trash to the curb and that the snow removal would not be a problem. Mr. Moretti asked whether they had a plan to get rainwater off the roof and into the ground, and Mr. Siebert said that they did.

DECISION OF THE BOARD

Chairman Witham stated that the decision would come down to detriment to property values in the vicinity or a change to the essential characteristics of the neighborhood. Mr. LeMay thought it was good to make the distinction between the two. Mr. Rheume agreed and thought it was a better proposal than the previous one. He gave the applicant credit for trying to make something that looked like it would fit into the neighborhood and felt they had succeeded. He said they possibly had gone far enough to meet all the Special Exception criteria but he felt that criteria was weaker than the variance criteria.

Vice-Chair Parrott commented on the way the Ordinance was written regarding detriment to property values and asked the Board to think how it would affect the adjacent properties and whether a realtor would point out a handsome 4-plex next door as a positive thing. He thought there was a great difference between property values in the vicinity and the essential characteristics of a neighborhood. One of the predominant features of the street was that all the other properties faced Broad Street and had key characteristics. It was a nicely-defined neighborhood. However, the project proposed to face a building sideways, which was a big difference and would be a change in the essential characteristics of the neighborhood. He noted that there was also a large amount of pavement and that the 160-ft. residential building was unlike any other buildings on the street.

Chairman Witham thought the applicant had made a good stab at it by making it look like a New England farmhouse, but he struggled with the fact that the other multi-level buildings on the street did not have the access of a driveway the width of the street with eight parking garage slots facing it. He could get comfortable with the size and the way it was broken up, but he had trouble accepting a 250-ft. long access that went almost the whole length of the property. Mr. Johnson agreed that they were sort of lowering the bar by the Special Exception and felt that he could get behind five of the six special exceptions except for Special Exception #3, the essential characteristics of the neighborhood. He thought it was a good design attempt as far as volume of the spaces and how they were staggered, but he said it was rare for someone to look at a house straight on, and he also felt that 160 feet was a long dimension.

Mr. Moretti brought up the neighborhood characteristics and noted that the buildings at Dennett Street and Woodbury Avenue were completely out of character with that neighborhood. When he looked at the project building, the front of it showed a New England home that would exist on a similar streetscape, and they stepped the building back so that one wasn't looking at a long building. He noted a previous conversation that the Board had about how the firemen would get into a dwelling, and he felt that the applicant addressed that issue by the large 24-ft. opening.

*Mr. LeMay made a motion to **deny** the special exception and the variance as presented and advertised, and Vice-Chair Parrott seconded the motion.*

Mr. LeMay stated that the Board had discussed it enough to realize that it hinged on the essential characteristics of the neighborhood. He said that it seemed to be too much mass compared to the other homes in the neighborhood, considering the orientation of it. It was a nice, large lot, but the only way to fit the large building on it was to twist the building 90 degrees, and that was different from where the neighborhood had evolved. It wasn't a question of density because there were multi-family homes in the neighborhood, but he just thought it didn't fit in that neighborhood.

Vice-Chair Parrott said he concurred with Mr. LeMay and was concerned about the aspects of the property values and the essential characteristics, the latter of which he felt was just as important as the potential detriment to property values. Facing houses sideways was contrary to the essential characteristics of the rest of the neighborhood, and the sheer size of the structure was much larger than anything else and was a serious variation from the essential characteristics of the neighborhood. Secondly, he was concerned about the large amount of pavement. Vice-Chair Parrott stated that he would also incorporate his prior comments by reference.

Mr. Johnson stated that he would support the motion to deny and that he would echo his earlier comments. He agreed with Mr. LeMay and said he had no problem with the density increase potential for the neighborhood but rather the way the scale and footprint were presented. He also had no problem with potential traffic increase. It came down to the size and characteristic of the design. Mr. Rheaume stated that he was torn because the applicant tried to do a lot, but he would support the motion because he felt that the applicant proposed perhaps one unit too much. He further discussed it, saying that the middle building was asking a little too much. He noted the two garages for each unit. He felt that a 3-unit building in the front or the barn could work, or that the applicant could make a smaller 4-unit, but the continuous structure going back with the large amount of garage space in-between was too long and too different from the neighborhood.

Chairman Witham stated that he was torn as well. He understood the design concept and said that the Zoning Code allowed four dwelling units. The history of the area was the conversion of larger homes. He said the project was almost like two duplexes put together, and what should be a driveway felt like a small street feeding a series of garages, which was very different from the neighborhood. The middle building added another whole element as well. He felt that it was romantic to have the barn in the back, but a barn in the back emitting light from 40-50 windows at night would lose that romantic effect with all the houses back there. He thought the project had come a long way, but that small street made the project not enough to get over the hurdle.

*The motion to deny **passed by a vote of 5 to 1** with Mr. Moretti voting against the motion..*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 11:17 p.m.
Respectfully submitted,*

Joann Breault
Recording Secretary