

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

7:00 P.M.

JANUARY 19, 2016

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott, David Rheume, Patrick Moretti, Charles LeMay, Christopher Mulligan, Jeremiah Johnson, Alternate James Lee

MEMBERS EXCUSED:

ALSO PRESENT: Planning Department: Juliet Walker

I. ELECTION OF OFFICERS

Chairman Witham postponed the election to the end of the meeting. He also welcomed James Lee to the Board as an alternate.

II. APPROVAL OF MINUTES

A) December 15, 2015

DECISION OF THE BOARD

*The December 15, 2015 minutes were **approved** with minor corrections by unanimous vote.*

III. PUBLIC HEARINGS - OLD BUSINESS

A) Request for Rehearing for property located at 65 Mendum Avenue

SPEAKING IN FAVOR OF THE PETITION

Mr. Mulligan recused himself from the vote.

Mr. Johnson said it would have been nice to know that the property had been taxed on two cards. Mr. Rheume agreed, noting that the only new pieces of information he saw were the two tax cards from 1976 and 1992. He said the 1958 deed described the property as one large piece and was clear that it had always been considered as one lot, so the presence or lack of the tax cards was not enough to sway his vote.

Minutes Approved 2-16-16

Vice-Chair Parrott stated that the appeal letter dismissed the fact that the house was built sideways to the lot as if it were of no consequence, and he felt that it was an odd place and a deliberate decision. He also thought it was strong evidence that the owners at the time considered that they controlled both lots. He felt it was illogical to place a house so that the owner was staring at the wall of the house next door, and he felt that the paper evidence as well as the testimony from the previous owner attested to that. He said he had not changed his mind and felt that the Board made the right decision.

DECISION OF THE BOARD

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

Mr. Rheume stated that the only significant change was the mention of the two tax cards from 1976 and 1992. There was a deed established that the Board had considered very carefully, and it was clear that the lot was one large lot. Other factors, like the placement of the home sideways and the street facing the empty lot, all weighed in on the Board's decision that there was a voluntary merging of the lots.

Vice-Chair Parrott stated that he would refer to his prior comments and that he concurred with Mr. Rheume.

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

IV. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 11-8

Petitioner: Tammy Gewehr

Property: 13 McDonough Street

Assessor Plan 138, Lot 49

Zoning District: Mixed Residential Business

Description: Provide less than the required off-street parking for a Bed and Breakfast.

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

1. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where three spaces are required for a Bed and Breakfast use.
2. A Variance from Section 10.1114.32 to allow off-street parking spaces that do not comply with the vehicular circulation requirements of the Ordinance. *(This petition was postponed from the November 24, and December 15 2015 meetings).*

SPEAKING IN FAVOR OF THE PETITION

Mr. Rheume recused himself from the vote, and Mr. Mulligan returned to his voting seat. Chairman Witham said Mr. Lee would sit in as an alternate.

The owner Tammy Gewehr stated that her petition would not impact street parking because her driveway had two legal spots. She wanted to lease one room in her home, so there would only be one additional vehicle. Two vehicles would fit perfectly in her driveway. She reviewed the five criteria and stated that her petition met all of them.

Mr. Mulligan asked whether the parking would be stacked and whether the patio at the end of the driveway would be lost due to the parking. Ms. Gewehr said the parking would be stacked and that the patio would not be lost because the two vehicles would be on the gravel.

Vice-Chair Parrott noted that the sketch did not show how wide the house was at the front street side. Ms. Gewehr said she thought it was 20 feet but wasn't sure. Vice-Chair Parrott said if that were true, the setback was 2 feet and the lot was 30 feet and wouldn't allow the 8-1/2 feet for a legal parking space.

SPEAKING IN OPPOSITION TO THE PETITION

David Rheame of 18 McDonough Street stated that he was a direct abutter. He passed out a copy of his letter to the Board and said he wished to clarify some points that the applicant had made that he felt were in error. He thought that the application failed on three criteria: the spirit of the Ordinance, public interest, and hardship.

Mr. Rheame gave some background on what Ms. Gewehr had not told the Board, which included the time she rented her entire house as a B&B throughout the summer and fall of 2015 and also rented single rooms out. He said there was usually a vehicle and sometimes more parked on the street. He noted that Ms. Gewehr was issued a Cease and Desist Order by the City in September 2015. Mr. Rheame also discussed the shed that Ms. Gewehr applied for in 2014, during which time she had told the Board that the property had one parking spot, so he said she did not have two parking spots as claimed, nor the availability for three spots. He also said she would not meet the open space coverage required by the Planning Department if she did have two parking spots. Mr. Rheame stated that if there was encroachment on a property by the owner of the empty lot next to it, that person would retain full rights to reclaim the property, which made the applicant's driveway narrower by 3 feet and would require two street parking spots. He said the criteria of meeting the essential character of the neighborhood failed because the house was in the MRB District with four businesses, all of which provided off-street parking. He noted that the applicant's property was a modest dwelling on a small lot that provided minimal to no parking and was like every other home in the neighborhood, so there was nothing unique in her request and no hardship. He felt that the petition should not be granted.

Mr. Mulligan asked whether the vacant property next door with the fence encroachment was still available for overflow parking. Mr. Rheame said it currently was but would not be once the property was redeveloped later that year.

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

Ms. Gewehr said she came to speak about her petition and not the shed. She insisted that there was room for two parking spots.

Mr. Mulligan stated that, in order for the Board to grant a variance, they had to find that it would result in substantial justice, and they balanced the loss to the applicant if denied against the benefit to the public. The Ordinance required three parking spaces, which the applicant did not have, and the proposed use would encourage people from elsewhere to come into the neighborhood with a car and leave it for the duration of their stay. He asked Ms. Gewehr to further explain why she believed her petition would result in substantial justice. Ms. Gewehr replied that a selling point when she bought her home was that it had two off-street parking spots. She said that the B&B would be beneficial to the City because she would recommend downtown activities.

Mr. Rheume noted that there were a dozen letters of opposition from the neighbors and that the Islington Street Corridor Neighborhood Association was also concerned about street parking. He believed that the applicant had not met all five criteria.

No one else rose to speak, and Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Parrott asked for discussion. He stated that the lot was 49 feet deep, and head-to-toe parking required a 20-ft long parking spot in that configuration. If the requirement was really for three parking spots, there would be no room for them if the shed stayed.

Mr. Mulligan asked Ms. Walker whether it would require an open space coverage variance. Ms. Walker said the Planning Department should have clarified the fact that they determined that the applicant would require a variance for open space.

Chairman Witham said it was not just the number of parking spaces but noted that there was also a variance for vehicular circulation requirements by two unrelated parties.

Mr. LeMay said it was about the parking and not the shed and found it hard to believe that it would be practical for someone unfamiliar with the area to park without a dedicated space. He also noted the stacking situation and that it could be on someone else's land and said he could not support a variance to give someone permission to park on someone else's property. He said there were too many pitfalls.

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

Mr. LeMay stated that his previous comments stood, and that his biggest concern was that the third parking spot was not actually available, and the second two were maybe undersized. He agreed with Mr. Mulligan's comment that substantial justice was not there. He did not see the hardship related to the property and didn't think it was in the interest of the neighborhood or the safety and traffic circulation.

Vice-Chair Parrott concurred with Mr. LeMay, adding that the letters were very telling because they were individually written and not like the mass-produced ones that the Board typically saw. He felt that the parking was a serious problem, and putting more cars on the

street could make a tough situation even worse. The lot was very small, and there was not enough room for three cars, and he questioned whether even two parking spaces would work. He said that what was being asked for was a physical impossibility to be a workable situation. He also noted that the application was incomplete because it didn't have the dimensions required for a variance.

Mr. Johnson asked Ms. Walker whether the submission requirements went through the Planning Department. Ms. Walker stated that the Planning Department followed up when the application was not complete and that they continually tried to ensure that the applications were clear and complete. Going forward, she said they would have a checklist and exhibits for the public to use.

Chairman Witham said he would support the motion because the City had been under a lot of pressure for B&B uses and parking requirements for guests could impose on neighborhoods. The applicant had to be able to meet the Zoning requirements for a B&B in a largely residential neighborhood. He was concerned that there would be similar requests that would encroach on the open space requirements and change the neighborhood.

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

B) Case # 11-15

Petitioners: Ryan & Jennifer Smith

Property: 100 Peverly Hill Road

Assessor Plan 243, Lot 51

Zoning District: Single Residence B

Description: Allow two residential dwelling units and a two story deck addition.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended, enlarged, or structurally altered except in conformance with the Ordinance.
2. A Variance from Section 10.440 to allow a two-family dwelling where only a single family dwelling is allowed.
3. A Variance from Section 10.521 to allow a 4791.6± s.f. lot area per dwelling unit where 15,000 is required.
4. A Variance from Section 10.516.40 to allow a 21'± front yard setback where 24' is required for an unenclosed deck. *(This petition was tabled with a request for additional information at the November 24, 2015 meeting and postponed at the December 15, 2014 meeting).*

SPEAKING IN FAVOR OF THE PETITION

Attorney Scott Hogan representing the owners stated that the assessing records for the property had shown it as a duplex for decades and that it had been described also as a two-family residence. He had looked at information from 1945 and the zoning map, which showed that the property was permitted to be used as a duplex. He said he also looked at a letter from a previous owner who testified that it was used as a duplex for many years. The

home was built in 1923 and laid out in the interior as two separate residential units. Attorney Hogan said he could not find any of the original documents showing building permits, or that during 90 years there was a continuous-use duplex. He also noted that several realtors had described the listing as a multi-family duplex. He said the owners wanted to do internal renovations and have more separation between the two units as well as install a deck for additional access to the units

Attorney Hogan stated that the New Hampshire Legislature had just favorably considered Legislature #146 to make the creation of one additional accessory residential unit a permitted use in every municipality. He said it was relevant to the criteria that, in supporting that bill, the Legislature found a variety of positive attributes, like the growing need for more diverse affordable housing. He noted that there would be no change in the property use and that the only physical change would be the outside deck.

Chairman Witham noted that the Planning Department was willing to grandfather the use if it were shown that it became a two-family unit before the zoning was in place, and he asked Attorney Hogan whether he knew what year it was zoned as a single residence district. Attorney Hogan replied that the only period of time that the duplex use was permitted was 1945. Chairman Witham noted that Attorney Hogan had stated that the zoning allowed 3,000 s.f. for a dwelling unit if it was converted to a two-unit dwelling prior to 1980. The owner Mr. Smith replied that it had been in his original application and that he misunderstood the Ordinance. Ms. Walker said it didn't apply in that zoning district.

Mr. Johnson asked Attorney Hogan whether there was a set of criteria in the Legislature to get the additional dwelling permitted. Attorney Hogan said the Legislature had a definition for an accessory dwelling, which he then read to the Board.

Mr. Rheume noted that Attorney Hogan had said the application was ahead of its time, which he agreed with, but said the application was being put forth in a single-residence district, which the Board carefully guarded because they were being pressured to create subdivided properties. He asked whether Attorney Hogan had other examples of additional accessory residential units in the vicinity, and Attorney Hogan cited 305 Peverly Hill Road and Middle Road. Mr. Rheume asked whether there was some physical separation between the stairwell up to the second floor and the breezeway. Mr. Smith explained how he would wall the first floor entrance and create an entrance to the second floor.

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

No one else rose to speak, and Chairman Witham closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan made a motion to **approve** the variances as presented and advertised, and Mr. LeMay seconded the motion.*

Mr. Mulligan stated that the applicant required four variances, three of which were easy to speak to. He felt that the issue of the two-family dwelling, where a single family was

allowed and the lot area per dwelling was under 5,000 s.f. where 15,000 s.f. were required, was significant, but he was convinced that it was an appropriate use and appropriate to the site. He said that it was a long-standing use and that the existing footprint had housed a second dwelling for a long time, so there would not be a great impact on the public.

Mr. Mulligan stated that granting the variance would not be contrary to public interest or the spirit of the Ordinance because the use of the duplex had been a long-standing one. The Board had been provided with tax records going back to 1981, and he was convinced that it had been longer than that, so there was no threat to the health, safety and welfare of the public. Granting the variance would result in substantial justice because the loss to the applicant if denied would not be outweighed by any gain to the public if the Board required that the dwelling be converted back to a single-family home. The long-standing use of the property tipped the scales toward the applicant. Granting the variance would not diminish the values of surrounding properties because there was no observable change in the footprint of the building except for the deck. Most of the interior work would not be visible to surrounding properties, and the multi-family character of the property had existed for a long time. As for the hardship criteria, Mr. Mulligan stated that there were special conditions of the property because the footprint already housed a second dwelling. There were wetlands on one side of the property and no residential development on an abutting lot. Although it was zoned for SRB, it was not a dense area, so there was no relationship between the purpose of the Ordinance prohibiting multi-family residences and requiring 15,000 s.f. per dwelling and their application to the property. It was a reasonable use and had been in existence for quite some time, so Mr. Mulligan thought the variances could be granted.

Mr. LeMay concurred with Mr. Mulligan and said it was a small step to formally recognize that the Board had determined the grandfathered use for 70 years.

Mr. Rheaume said he would also support it because there was a reasonable possibility that the property was subdivided during the wartime period and there had been enough usage over the years that the property would be grandfathered. He also noted that there was some distance between the property and its neighbors, making it feel separate and distinct.

Vice-Chair Parrott stated that the lot was less than 2/3 the size that the City required in the SRB zone. He said the structure looked like a single-residence house and had been designed and used as a single residence for a long time. He didn't agree with the reasoning that, just because something was used improperly a long time ago, it was okay even though the zoning was changed. The use had been abandoned, which wiped the slate clean for him. The majority of adjacent properties were single-residence, and it was in the Single Residence Zone. He felt it was a poor practice to suddenly decide for personal reasons that a property could be changed from a potentially conforming one to a non-conforming use when there was no hardship. He understood the reasoning but said the property could be sold the next day. He didn't think it was appropriate to suddenly decide that the property in the middle of the SRB District could be converted to a legal duplex.

Chairman Witham stated that he would support the motion and saw the property as an outlier because the properties surrounding it were mostly vacant land. Most of the houses were built on double lots, so it would not change the essential character of the neighborhood.

*The motion **passed** by a vote of 6-1, with Vice-Chair Parrott voting against the motion.*

V. PUBLIC HEARING – NEW BUSINESS

1) Case #1-1

Petitioners: Donald A. & Ruth K. Littlefield

Property: 384 Union Street #4

Assessor Plan 134, Lot 54-4

Zoning District: General Residence A

Description: Construct roof over existing deck.

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 a rear yard setback of 11'9"± where 20' is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Donald Littlefield stated that the carriage house had a 10'x30' deck and that he wanted to put a roof over it.

Mr. LeMay asked whether Mr. Littlefield would enclose it, and Mr. Littlefield said he would not. Mr. Mulligan asked Mr. Littlefield whether he would build on the existing footprint of the deck and whether it would be the only physical change, and Mr. Littlefield agreed.

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

No one else rose to speak, and Chairman Witham closed the public hearing.

DECISION OF THE BOARD

*Mr. Mulligan made a motion to **approve** the variances as presented and advertised, and Mr. Moretti seconded the motion.*

Mr. Mulligan stated that minimal relief was being requested and that the applicant simply wanted to add a roof structure to a deck, which was a good idea. The relief requested was driven by the current configuration of the property, which already had the encroachment against the rear yard setback. Mr. Mulligan therefore felt that granting the variance would not be contrary to public interest or the spirit of the Ordinance, and the essential character of the neighborhood would not change, nor would the health, safety and welfare of the public be affected. It would result in substantial justice because there would be no gain to the public if the Board required the applicant to meet the setback – he was just building up on the existing footprint. Granting the variance would not diminish surrounding properties, and special conditions of the property that distinguished it from others was that it was a carriage house stuck in the rear corner of the property, where it already encroached against the rear setbacks, and any work would require relief. He felt that the use was a reasonable one and would be beneficial to the property.

Mr. Moretti concurred with Mr. Mulligan, saying it was a very small change to the building, and the owner would get beneficial use of the windows and doors on that side of the house.

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

2) Case #1-2

Petitioners: Ajeet Jai & Kathleen Jo Singh

Property: 140 Thornton Street

Assessor Plan 160, Lot 8

Zoning District: General Residence A

Description: Construct single-family home.

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

1. A Variance from Section 10.516.10 to allow a 0'± primary front yard setback where 7.3' is required and a 5'± secondary front yard setback where 8.3' is required.
2. A Variance from Section 10.521 to allow 30.28±% building coverage where 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owners Ajeet Singh and Katherine Singh and their architect Jim Sterling were present to speak to the petition. The Singhs went through the background of why they bought the house, noting that they knew at the time that it was too small for their needs. Mr. Singh said they decided the previous year to tear down the existing home and replace it, based on technical and practical issues which he discussed in further detail.

Mr. Rheume noted a garage on the back side of the property, and Mr. Singh said it was only a concrete pad. He said when the site survey was done, their parking lot was on the abutter's property and the owner gave them until March to move the driveway, and doing so raised complex issues. Mr. Rheume asked Mr. Singh whether he was confident there was no legal remedy to continue to use the driveway or an easement in place, and Mr. Singh said he was. Vice-Chair Parrott noted that he didn't see parking spaces located in dimensions in the packet. Mr. Sterling replied that the dedicated spots were in the garage. He then addressed the five criteria and said the petition met them all.

Mr. Rheume said that the Board had to consider that the essential character of the neighborhood would not change and that the petition would not be contrary to public interest. He said the home being replaced was a 20th century house with charm, and he asked Mr. Sterling what the inspiration was for the design and how it would fit into the neighborhood. Mr. Sterling replied that character was subjective and that the neighborhood was eclectic. He said the house responded to contemporary design and had a small footprint. He further discussed it, noting that a lot of time was spent on whether to renovate the existing house or build a new one. Mr. Rheume asked how many square feet of livable space was in the current home and in the new home. Mr. Sterling said he didn't have the numbers but that the footprint of the current house was 750 s.f. and the new house was over

800 s.f. and he felt they were in the realm of the Zoning. Mr. Rheume asked for examples of underground parking in the neighborhood, and Mr. Singh said that the house across the street had a high entrance level to the porch.

SPEAKING IN OPPOSITION TO THE PETITION

Bob Cook of 117 Burkett Street stated that the application met the height requirement but felt that it would have a significant impact on the character of the neighborhood and set a precedent because all the houses were small and narrow.

David Loehwing and Melinda Mulligan of 130 Thornton Street stated that the size of the house and the orientation had changed. The house would be taller and closer to their home.

Paul Mceachern of 70 Dennett Street stated the house was bought as a single-family residence and felt it was a self-created hardship to tear it down. He was concerned about a trend of replacing existing buildings with bigger ones so that the land value would rise.

Mary Ann Jamik of 21 Burkett Street stated that she was also fearful of setting a precedent and that the 25% figure was set to prevent people from buying properties and putting larger buildings on them. She said she was also concerned about the water table.

John Wyckoff of 135 Sparhawk Street read the cover letter that the applicants wrote when they bought the property, stating that they wished to make the house their home and become part of the neighborhood. They knew the structure didn't meet their needs but the location was ideal, so he felt that the owners did not have a hardship. He went through the criteria, stating why the application did not meet them, and he said the Board should deny it.

Shawn and Sarah McLaughlin of 1161 Thornton Street stated that they were abutters and opposed because they felt it would set a precedent for tear-downs and hurt their property value. Pohl Karsten Of 416 Dennett Street and Judy Howard of 80 Burkett Street agreed.

Sally Struble of 24 Burkett Street and Daphne Bureau of 133 Thornton Street stated that they opposed the petition because it would affect the character of the neighborhood, and they also felt that it was not a hardship.

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

Mr. Singh said he had distributed letters to the neighbors about his plans and had not heard anything negative then. His neighbor had recently installed solar panels and put up a two-car garage, which he felt was not in keeping with a quaint neighborhood. He said the neighborhood was not historic and no one had told him to stop making plans. The house next door occupied 33% lot coverage and his would occupy 30%. He reminded the Board that it was about the variance requests and not the design.

Mr. Sterling stated that the underground garage was not really an underground one but was the same level as the basement, and they raised the foundation to accommodate space for

vehicles. He also said that water issues were discussed with the engineers, and there were no problems. He noted that the pitch of the roof would be the same as the existing building.

Mr. Rheaume asked about the retaining wall being partly on City property, and Mr. Sterling said it could be reconfigured.

Sally Struble said someone would use the house as a precedent. Pohl Karsten again stated that it would change the neighborhood character and felt that the 25% lot coverage criteria were there for a reason. Mr. Singh stated that everyone wanted a new Ordinance, but that a new set of rules could not be applied just because a group decided so. Mr. Wyckoff stated that the variance would be contrary to public interest.

No one else rose to speak, and Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Chairman Witham stated that all the opposition he was hearing was because a change like that was a big disruption, but he was being asked as a Board member whether the project was worthy of two variances and met the criteria. Regarding all the comments about changing the essential characteristics of the neighborhood, he said the applicant had to deal with the front setback and lot coverage, and that the light, air and visibility issues met the criteria. The front of the house was in line with other homes on Thornton Street, and granting a front setback would not change the character of the neighborhood. The applicant was going from 29% to 30-1/4% for lot coverage, which would not change the character of the neighborhood. He noted that most of the neighborhood had lot coverage of 30% or more. He emphasized that nothing in the Ordinance said that one could not tear down a house. In terms of design, it was personal preference. The applicants met the height requirement, and he didn't think that the house was significantly larger. Other people had doubled and tripled the sizes of their homes, so he felt that the project was similar to what was around it and met the criteria for setback and lot coverage.

Mr. Johnson said that he agreed, noting that any new construction on the site would ask for relief in some manner. Mr. LeMay said the setback and the way the house was built improved the front a bit, and what the applicant was asking for was miniscule. He felt the applicant had respected the dimensional requirements compared to what they currently had, and they had improved the driveway-side situation. He noted that there were some good-sized houses in the neighborhood and felt that it would not be out of character.

Mr. Rheaume said he felt that the applicant bought the property with no intention of keeping the home, and he shared many abutters' concerns about what property values had become in Portsmouth by people buying land and tearing down the house. He was disturbed by the trend but said that the Board could not address it because they had requirements to uphold the Ordinance as it stood. He said that each case was different and that the Board used the 25% lot coverage figure but also recognized that the number could budge to keep things going. The encroachments were minor and did not have light and air concerns. The neighborhood had various types of architecture, and it wasn't the Historic District, and he believed that the applicant met the criteria.

Mr. Moretti said he agreed with all prior comments and said he would love to see the house improved, but it wasn't up to the Board. He asked Ms. Walker whether an additional 10% was added to the open space coverage due to the pavement, and Ms. Walker said the applicant met the open space because they reduced it by 10% but were still over the 30% minimum. Mr. Moretti said that would be his only hang-up and noted that the Board had approved a lot less.

*Mr. LeMay made a motion to **approve** the variances as presented and advertised, and Mr. Johnson seconded the motion.*

Mr. LeMay stated that the Board had gone over the variances a number of times, and it clearly wasn't the variances that were the issue that evening. Granting the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed because the proposed use would not conflict with the explicit or implicit purpose of the Ordinance and it would not threaten the public health, safety or welfare or injure public rights or affect the essential character of the neighborhood. Granting the variance would do substantial justice because the benefit of the applicant would not be outweighed by harm to the general public or other individuals. The granting of a 3-1/2" variance to the front setback or a 38 s.f. addition to the area of the footprint would not harm the general public. If people felt there was damage, it would be the design or the height they objected to. Granting the variance would not diminish the value of surrounding properties. Mr. LeMay said he had not heard much discussion of property values that night, except for esthetic comments, and didn't believe there would be damage to property values. As for literal enforcement of the Ordinance resulting in unnecessary hardship, he could not see where denying the variances and causing hardship for the applicant not being able to develop the property in that way was justified.

Mr. Johnson stated that he stood by his earlier comments and concurred with Mr. LeMay.

Vice-Chair Parrott said that he agreed with the previous comments. The Board had a formula that they had to go by, the five criteria. The relief asked for on the coverage was 1.35%, which was small. He noted that the Board traditionally granted small variances like that universally. They didn't write the rules or the criteria but tried to apply them. They didn't have to like a design, which was what a lot of the comments in opposition that night addressed. He said he would reluctantly support it under the rules and regulations that the Board had to operate under. He said it met the criteria.

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

Chairman Witham stated that the Board would hear one more petition and postpone the rest of the petitions to the following week.

3) Case #1-3

Petitioners: John Algren & Bessie J. Palmisciano, owners, Chinburg Builders, Inc.,
applicant

Property: Langdon Street (corner of McDonough Street)

Assessor Plan 138, Lots 48-1, 48-2, 48-3

Zoning District: Mixed Residential Business and Office Research

Description: Construct a single-family home on each of three lots.

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

Lot 1. Variances from Section 10.521 to allow the following:

- a) A lot area of 5,022± s.f. where 7,500 s.f. is required.
- b) A lot area per dwelling unit of 5,022± s.f. where 7,500 is required.
- c) A lot depth of 78.47± where 80' is required.
- d) A 5'± secondary front yard setback where 10' is required.

Lot 2. Variances from Section 10.521 to allow the following:

- a) A lot area of 5,301± s.f. where 7,500 s.f. is required.
- b) A lot area per dwelling unit of 5,301± s.f. where 7,500 s.f. is required.
- c) A lot depth of 77.39' where 80' is required.
- d) Continuous street frontage of 68.5'± where 100' is required.

Lot 3. Variances from Section 10.521 to allow the following:

- a) A lot area of 4,965± s.f. where 7,500 s.f. is required.
- b) A lot area per dwelling unit of 4,965± s.f. where 7,500 is required.
- c) Continuous street frontage of 43.24'± where 100' is required.
- d) A lot depth of 76.84'± where 80' is required.

Mr. Rheaume recused himself from the vote, and Mr. Lee sat in as alternate.

SPEAKING IN FAVOR OF THE PETITION

Attorney Anne Crotty representing the owners was present to speak to the petition. She introduced John Chagnon of Ambit Engineering. Attorney Crotty gave the background of the petition and stated that the same variances were received in 2013 but had expired.

Chairman Witham asked whether there was a difference between the new plan and the 2013 one. Attorney Crotty said there wasn't but explained that they were allowed to build a 3-unit multi-building on the complex by law but were requesting a 3-unit subdivision instead because it was a better use of the MRB property. She noted that they had agreed to several stipulations in 2013 and would have the same stipulations, which she read.

Vice-Chair Parrott asked what the legal status of the lots were and how many there were. Attorney Crotty said there was currently one lot that they proposed to be four separately deeded lots. Vice-Chair Parrott asked about condominium development, and Attorney Crotty replied that the proposed development allowed for three detached condos, but they thought it would be better for three detached buildings that would have separate numbers. She reviewed the criteria and stated that the petition met them all.

Chairman Witham asked Attorney Crotty to describe the land they were converting to the City and how it would be used. Mr. Chagnon rose to speak and said that the Department of Public Works would be able to put a road that looped back from Brewster Street to Langdon Street, eliminating two dead ends. Also, some of that land was used for the Brewster outfall project to put in drainage infrastructure in the railroad corridor.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Beth Moreau of 18 McDonough Street said that she was a direct abutter and was excited that the property would be developed. She felt that the variances were not necessary because a condominium ownership would have a different ownership characteristic to the neighborhood. She said she had no concerns about parking in the neighborhood.

Ms. Walker stated that the Planning Department received a letter from someone who was concerned about the petition setting a precedent, which she would forward.

No one else rose to speak, and Chairman Witham closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair Parrott made a motion to **approve** the variances as presented and advertised, and Mr. Moretti seconded the motion.*

Vice-Chair Parrott stated that the petition was a bit unusual but straightforward and was a development of a vacant lot into three separate deeded house lots. Granting the variance would not be contrary to public interest because the size and shape of the lots showed that they would be more regular in shape than most of the other lots, which was a plus. There was no one present to speak against it, and he said the neighborhood was actually in favor of it. It would also observe the spirit of the Ordinance. Granting the variance would do substantial justice. He could hardly see any public interest that would contravene the aspects of the petition. It would not diminish the value of surrounding properties because three new houses built to code on good-sized lots and oriented in a logical fashion would be a plus for everything else in the neighborhood. Regarding the unnecessary hardship test, it had special conditions of where it was located, had not been developed for a long time, and had been used for casual parking. It was distinguished from other properties in the area because it was larger, so he was convinced that it met all the criteria.

Mr. Moretti said he agreed that the neighborhood had undergone renovations for many years and was in need for new housing, and he thought it would be a vast improvement.

Mr. Mulligan asked whether the Board was also approving the 2013 stipulations and was told that they were.

*Vice-Chair Parrott amended his motion to include the **stipulations**, and Mr. Moretti seconded the amended motion.*

Chairman Witham said he would support the petition because it had not changed from 2013. Even though lots of relief was requested, the lot was bigger and wider than average with off-street parking, so he was okay with it.

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

The Board addressed the voting for officers that was postponed from the beginning of the meeting. Vice-Chair Parrott stated that he was giving up his seat.

*Mr. Mulligan moved that Mr. Rheaume be the new Vice-Chairman, and Vice-Chair Parrott seconded. The motion **passed** with all in favor, 7-0.*

*Mr. Rheaume moved that Mr. Witham remain Chairman, and Vice-Chair Parrott seconded. The motion **passed** with all in favor, 7-0.*

VI. OTHER BUSINESS

No other business was presented.

VII. ADJOURNMENT

*A motion to adjourn at 10:50 pm was made and seconded and **passed** unanimously.*

Respectfully Submitted,

Joann Breault
Recording Secretary