

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
SCHOOL BOARD CONFERENCE ROOM  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

**7:00 P.M.**

**FEBRUARY 16, 2016**

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

**MEMBERS EXCUSED:** None

**ALSO PRESENT:** Planning Department: Jane Ferrini

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**I. APPROVAL OF MINUTES**

- A) January 19, 2016
- B) January 26, 2016

*The two sets of minutes were **approved** with minor corrections by unanimous vote.*

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**II. OLD BUSINESS**

- A) Clarification of Variances granted for property located at 209 Clinton Street.

**DISCUSSION**

Mr. Moretti recused himself from the petition.

Chairman Witham reminded the Board that the setbacks were noted inaccurately and they were asked to accept the new dimensions approved in September 2015.

Pam Gould of 209 Clinton Street said the original drawings based on the pre-existing fence were approved and the addition was built. The surveyor she hired discovered that the lot line was wrong; otherwise, the petition met the original specifications.

Mr. LeMay asked whether the corner was the only area infringed upon, and Ms. Gould agreed but said they had thought they had 17 feet of setback on the other side of the building and would need a variation on that side as well. Chairman Witham asked about

a pin. Ms. Gould said there was a pin and that the tree had grown through the fence, so half the tree was on the neighbor's land.

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

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

### **DECISION OF THE BOARD**

Chairman Witham asked the Board whether they could just accept the clarification, based on what the Planning Department put before them. Mr. LeMay stated that it was done in good faith and didn't violate the spirit or intent of the variance, but he suggested that they do it as an equitable waiver. Chairman Witham agreed.

*Mr. LeMay made a motion to treat the request as an **equitable waiver**. Vice-Chair Rheume seconded the motion.*

Mr. LeMay stated that first, the violation was not noticed or discovered by the owner, agent, or municipal representative until after the structure in violation had been substantially complete. Second, the violation was not an outcome of ignorance of the law or Ordinance, failure to inquire, obfuscation, misrepresentation or bad faith on the part of the owner, agent, etc. but was instead caused by either a good faith error in measurement or calculation made by the owner or its agent. Third, Mr. LeMay said that the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of the property. Last, Mr. LeMay stated that, due to the degree of past construction or investment made in ignorance of the faces of the violation, the applicant has incurred significant expense that would be difficult to recoup, and the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require a correction.

Vice-Chair Rheume said there were two issues, the distance to the property line, which was reduced by 8 inches and was less than a 10% discrepancy. More concerning was the lot line, but the Board had recognized that the lot line was not up against the property line like the previous drawing showed, so they were comfortable with the addition. It would also pose a significant expense to the applicant to recoup the money spent on the design, so he found it satisfactory.

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

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### **III. PUBLIC HEARINGS – NEW BUSINESS**

- 1) Case #2-1  
Petitioners: Benjamin M. & Amanda J. Goss

- Property: 6 Pine Street  
Assessor Plan 159, Lot 47  
Zoning District: General Residence A  
Description: Replace garage and add connecting mudroom.  
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 nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.521 to allow a 3'± right side yard setback where 10' is required.

Mr. Moretti resumed his seat.

### **SPEAKING IN FAVOR OF THE PETITION**

Imelda Dench, representing the owners, and the owner Benjamin Goss were present to speak to the petition. Ms. Dench explained how the petition met the criteria.

Mr. Goss stated that Derek Durbin, a prior Board member and an abutter, sent an email to the Planning Department saying that he was in support of the project, and said he also had emails of support from the other neighbors

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

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

### **DECISION OF THE BOARD**

*Mr. Mulligan made a motion to **grant** the variances as presented and advertised. Mr. Parrott seconded the motion.*

Mr. Mulligan said it was a request for relief from the side yard setback which was substantial, but what presently existed was less than one foot and close to the neighboring dwelling, so he felt that it met all the criteria. Mr. Mulligan stated that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the essential characteristics of the neighborhood would remain residential. There would be no threat to the public's health, safety and welfare if granted. It would do substantial justice because the loss to the applicant would far outweigh any gain to the public if the applicant was required to redesign the proposed addition and garage to meet the side yard setback and push it against the existing dwelling to meet the setbacks. It would be unusual and not valuable or gratifying to the applicant. Granting the variances would not diminish the value of surrounding properties because the tastefully-designed garage and addition would make the property more valuable and would enhance the values of surrounding properties and get the structure away from the neighboring dwelling. Literal enforcement of the Ordinance would result in unnecessary hardship.

The small corner lot was very tight to the nearest abutter, so there were special conditions. There would be no fair and substantial relationship between the purpose of the setback ordinance and the application to the property. The use was a reasonable one, and the proposed garage and addition were more modest than typical ones.

Mr. Parrott said he concurred with Mr. Mulligan and felt that it was a modified infill project where most of the new construction was toward the middle of the lot, so there would be no effect on the neighborhood. It would be a nice upgrade to the house and would complement the rest of the neighborhood. Its proportion on the side was as small as could be, yet still achieved the desired results.

Mr. Rheume stated that the addition was very modest and the roofline was lower than the existing one. There was a hardship with the placement of the current home, and some other kind of addition on the back of the house would be more awkward than what was proposed. It was a logical place to put the addition and the neighbors supported it.

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

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- 2) Case #2-2  
Petitioner: Alden Properties LLC  
Property: 33 Columbia Street  
Assessor Plan 145, Lots 41 & 42  
Zoning District: General Residence C  
Description: Add two dwelling units on a merged lot to the existing three dwelling units.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.521 to allow 3,253± s.f. of lot area per dwelling unit where 3,500 s.f. per dwelling unit is required.

Mr. Mulligan recused himself from the petition.

### **SPEAKING IN FAVOR OF THE PETITION**

John Bosen representing the petitioner was present to speak to the petition and said they wanted to merge the lots and build a dwelling on them. He said the garage would not be living space and that they met all the parking requirements and didn't require setback relief. He explained in detail how the criteria would be met.

Vice-Chair Rheume noted that the relief requested was modest and asked whether they had considered the square footage per dwelling unit for the surrounding property. Mr. Bosen said they had not done measurements but felt that it was representative of the neighborhood. Mr. Johnson asked whether the garage had two floors of storage. Mr. Bosen said it had one floor of storage and emphasized that it would not be a living area.

Mr. LeMay asked whether the proposed units would be condominiums or rentals. Mr. Bosen said they would be condominiums and garages would be deeded with each unit. Pat (last name inaudible) of the Birchwood Condominium Association said he was concerned about street parking and also wanted to ensure that there were enough parking spaces for two units. Chairman Witham stated that the Planning Department had done a code review and no parking was requested as part of the variance, so he assumed that all the parking requirements were met. Mr. Johnson added that the Staff Report noted that ten parking spaces were required and nine were proposed. Mr. Bosen stated that they would meet or exceed the Parking Ordinance.

### **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**

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

Vice-Chair Rheume said the amount of relief was minor. There were two separate dwellings that were within the requirement of the Ordinance as determined by the Planning Department, and there was no relief for parking.

Vice-Chair Rheume stated that granting the variance would not be contrary to the public interest. Although the applicant had not taken a close look at the lot sizes of surrounding properties, Vice-Chair Rheume knew there were multi-family units on small lots on the street and that the lot area per dwelling unit was small and in keeping with the characteristics of the neighborhood. Granting the variance would observe the spirit of the Ordinance because the relief being sought was not excessive. It would do substantial justice and allow the owner to make full use of the two merged lots in a logical manner. It would not diminish the value of surrounding properties because the existing dwelling structure had been upgraded and the new structures would be a similar improvement and would increase surrounding property values or keep them neutral. The hardship test was met due to the unique configuration of the lot once the two buildings were merged. The overall square footage was large and could support at least one additional dwelling unit. The request for the second unit made sense due to the available space. There was ample lot coverage. There was no public interest that would outweigh the nature of the hardship, and it was a reasonable request.

Mr. Johnson said he concurred with Vice-Chair Rheume and thought it was a modest request. Chairman Witham said he would support it because, although it looked substantial, the actual variance and request were minimal.

*He suggested the stipulation that no living space would be included above the garage. Vice-Chair Rheume and Mr. Johnson agreed to add the stipulation to the motion.*

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

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3) Case #2-3

Petitioners: Natan Aviezri Revocable Trust, Debra Klein and Natan Aviezri,  
Trustees

Property: Middle Road at Ward Place (formerly 75 Monroe Street)

Assessor Plan 168, Lot 27 (merged from Lots 34 & 35)

Zoning District: General Residence A

Description: Construct a single-family home and garage on two re-merged lots.

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

1. A Variance from Section 10.521 to allow a lot area of 6,022± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,022± s.f. where 7,500 s.f. per dwelling unit is required.
3. A Variance from Section 10.521 to allow continuous street frontage of 93.6'± where 100' of continuous street frontage is required.

Mr. Mulligan resumed his seat.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Francis Bruton and the applicant Natan Aviezry were present to speak to the petition. Attorney Bruton explained how the lot was really five lots and that they wanted to merge it into three lots and then two lots. He explained how the criteria were met.

Chairman Witham asked whether the Planning Board had indicated a preference for the garage doors, and Attorney Bruton said they had not. In answer to further questions from the Commission, Attorney Bruton stated that the smaller lot would have a single-family structure on it and that they would prepare a final plan of merger, which either the Planning Board or the City Council would approve.

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

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

### **DECISION OF THE BOARD**

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

Mr. LeMay stated that the straightforward petition squared away the five lots in terms of getting them unscrambled and put back together in a useful way and that the relief requested was a small amount. Mr. LeMay stated that granting the variance would not be contrary to the public interest and that the spirit of the Ordinance would be observed. It would not change the nature or characteristics of the neighborhood because there were

similar homes in the area and it was a reasonably-sized lot for the proposed home. Granting the variance would result in substantial justice because there would be no benefit to the general public by keeping it from being developed. It would not diminish the value of surrounding properties because after a year, it would look like it had always been there, and there would be no significant impact on the abutters. Relating to the hardship criteria, it was a corner lot with frontage on two streets, and it had a history of merging and unmerging. There was no public interest to balance against preventing the owner from developing the lot.

Mr. Moretti said he concurred with Mr. LeMay.

Chairman Witham requested that the Planning Board indicate their preference for the driveway cut, based on safety concerns.

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

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- 4) Case #2-4  
Petitioners: Abbie J. & Lee M. Frank  
Property: 169 Madison Street  
Assessor Plan 145, Lot 53  
Zoning District: General Residence C  
Description: Construct rear addition.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.521 to allow a 2'6" ± left side yard setback where 0' is required.
  3. A Variance from Section 10.521 to allow 40.12%± building coverage where 37%± exists and 35% is the maximum allowed.

#### **SPEAKING IN FAVOR OF THE PETITION**

Chairman Witham asked the Board whether or not they wanted to evoke Fisher vs. Dover, and they said they did not.

The owners Lee and Abbie Frank were present to speak to the petition. Mr. Frank noted that their previous petition had been denied and explained how the changes would meet the criteria. He emphasized that the lot coverage was 42% less than requested originally and that he had overwhelming neighbor support.

Vice-Chair Rheume said there looked like there was plenty of room for parking two vehicles. Mr. Frank said the shed was large enough for a vehicle but wouldn't be a garage because the driveway could not be used to get to it.

David Gaddy of 173 Madison Street said he was a abutter and felt that there would be no decrease to his property values because the addition would be built far enough back.

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

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

**DECISION OF THE BOARD**

Chairman Witham told Mr. Frank that he appreciated his efforts to address the Board's concerns. He noted that the request for lot coverage was 41.2 ft± and that the City Inspector might require a little land for the rear door, so he was comfortable if it went up a little. Mr. Johnson also commended the applicant for a better application.

*Vice-Chair Rheume made a motion to grant the variances as presented and advertised. Mr. Mulligan seconded the motion.*

Vice-Chair Rheume said that the changes made him feel more comfortable and that he appreciated the sacrifices the applicant had made in losing a bedroom and the use of the garage. He felt that the smaller addition had a more authentic feel.

Vice-Chair Rheume stated that granting the variances would not be contrary to the public interest or the general characteristics of the neighborhood. By changing around the configuration and building it off the property line, 2.6 feet was less than what was required but more than adequate to give relief to the property line. He felt that the small addition was more in keeping with the neighborhood and would add more interest to the home. Granting the variances would observe the spirit of the Ordinance because it was reasonable to ask about 3% more. The side setback of 2-1/2' was substantial relief, but the existing structure was up against the property line. Substantial justice would be done because the owner had made some sacrifices. Granting the variance would not diminish the value of surrounding properties because the tasteful addition would add to and not detract from the value of surrounding properties. The property was unique, consisting of a long, narrow lot against the property line, which created the hardship. He felt that the proposed use was a reasonable one and that no public use would outweigh it.

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

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

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- 5) Case #2-5  
Petitioners: Robert R. & Elizabeth H. Macdonald  
Property: 209 Gosport Road  
Assessor Plan 224, Lot 10-12  
Zoning District: Single Residence A  
Description: Construction of a single-family residence.  
Requests: The Variances necessary to grant the required relief from the Zoning



Ordinance, or other required relief, including the following:

1. An Equitable Waiver of Dimensional Requirements as defined in RSA 674:33-a to allow the existing foundation of a dwelling structure to remain with an 18.7'± right side yard setback where 20' is required.
2. A Variance from Section 10.521 to allow an 18.7'± right side yard setback where 20' is required.

### **SPEAKING IN FAVOR OF THE PETITION**

John Chagnon of Ambit Engineering and the owners Robert and Elizabeth Macdonald were present to speak to the petition. Mr. Chagnon stated that they had helped the previous owners obtain permits, including setback relief. They bought the lot and modified the plan based on their house plans, and then discovered that the side setback was dropped in favor of the wetland setback and created a 18.7' setback where 20' was required. Mr. Chagnon emphasized that the violation wasn't noticed until the foundation was done and that it was a good faith error in measurement. He said the violation would be imperceptible and that the cost to correct it far outweighed any public benefit.

Chairman Witham said he wanted to address the equitable waiver first. He asked whether the relief sought was half of the base. Mr. Chagnon said it was a section of that base. In answer to Mr. Mulligan's questions of whether anything would be built on the lot next to it and when the applicant started pouring the foundation, Mr. Chagnon said a single-family house would be built and that the foundation was poured in December.

Mr. Chagnon then reviewed how the petition met the criteria. Mr. LeMay asked what the finished width of the house at the roof was. Mr. Chagnon said it was a 12" overhang, so the finished width was about 56 feet and the 12" overhang did not have to meet the setback requirement.

Thomas Frangos of 33 Gosport Road said he saw no adverse impact from the petition.

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

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

### **DECISION OF THE BOARD**

It was decided to approve the Equitable Waiver and criteria together.

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

Mr. Parrott noted that the situation was what the waiver was designed to deal with and that everything had been done right. An engineering error was made, resulting in a slight shift in the position. What was asked for was 1% of the distance, which was pretty small. The lot was a good-sized one, and the deviation from the plan would be imperceptible.

Granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the spirit was to deal with situations like the applicant's in a common-sense way and let the people build what they wanted as long as they didn't interfere with the neighbors. Substantial justice would be done because no public interest would be promoted if the application were denied. The project would be delayed and cause unnecessary expense for the owner. Granting the variances would not diminish the value of surrounding properties because the change was so small that it wouldn't be noticed, and he didn't see any plus-or-minus effect to surrounding properties. The house closest to the sideline was a lot closer to the road than the new house. As for unnecessary hardship, special conditions were that the house was already built, so it would be a considerable hardship for the owner if the Board told him to 'shorten the house'. Mr. Parrott felt that the application met the criteria.

Mr. Moretti said he concurred with Mr. Parrott and that the application passed all the tests. The small error was imperceptible to anyone.

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

6) Case #2-6

Petitioners: Portsmouth City Investment Realty Trust and Airgead Realty Trust,  
Paul & Christopher D. McInnis, Trustees, owners, Maplewood Ridge,  
LLC, applicant

Property: 678 Maplewood Avenue

Assessor Plan 220, Lots 89 & 90

Zoning District: Single Residence B

Description: Construct townhouses and an apartment building on two merged lots.

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

1. A Variance under Section 10.440 to allow multi-family dwellings containing 30 dwelling units where only a single family dwelling is allowed.
2. A Variance from Section 10.513 to allow two free-standing dwellings on a lot where only one free-standing dwelling is allowed.
3. A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,341± s.f. where a minimum of 15,000 s.f. per dwelling unit is required.
4. A Variance from Section 10.521 to allow a structure height of 48'± where 35' is the maximum allowed.
5. A Variance from Section 10.1114.32 to allow parking where vehicles entering or leaving a parking space must pass over another space or require the moving of another vehicle.
6. A Variance from Section 10.1113.20 to allow off-street parking spaces to be located between a principal building and the street.

Mr. Moretti recused himself from the petition.

**SPEAKING IN FAVOR OF THE PETITION**

Joseph Russell on behalf of owner was present to speak to the petition and introduced the owner Chris McInnis and the senior engineer Patrick Crimmins from Tighe and Bond. Mr. Russell reviewed the petition, noting that it would bring affordable housing to the City by including dedicated work force apartment units.

Mr. Crimmins explained to the Board how the two parcels would be merged, noting that there would be six individual townhouses with one parking space per unit that would be used in tandem. He said the public would not notice the parking situation. He also discussed the request for density for the building height.

Vice-Chair Rheume asked Mr. Crimmins about the easement for power lines. Mr. Crimmins said he didn't see the easement falling off the parcel. Vice-Chair Rheume asked whether the easement across the parking area crossed along the two adjoining parcels, and Mr. Crimmins said it was half and half and that there were no structures on the two adjoining parcels. In answer to Vice-Chair Rheume's question about whether the parcels were land-blocked, Mr. McGinnis said they were three separate lots.

Mr. Russell then reviewed the criteria and explained in detail how they would be met. He said that the proposed use would be allowed in the SRA zone and felt that the project would increase property values around it due to its history of vagrancy.

Vice-Chair Rheume asked whether there had been a previous effort to rezone the property. Mr. McInnis said when he bought the property in 2012, he thought the business line should be continued to Route 95, but the neighbors weren't in favor of it and he felt that the Zoning Board was the best way to take the project through. Vice-Chair Rheume asked what the status of the existing home in front was and its age, and Mr. McInnis said the house was rented monthly and was built before 1900.

In answer to Mr. Johnson's questions, Mr. Crimmins said the plan was representative of the 41% open space, that the traffic count was standard, that the elevation would be the highway's height and the building would have mechanical units on top of it.

Mr. Parrott asked whether the townhouses would be retained as rental units, and Mr. Crimmins agreed. Mr. Lee asked how long the workforce housing would last, and Mr. McInnis said it would last in perpetuity and that he would agree to a deed restriction.

Thomas Frangos of 33 Gosport Road said he had a construction business and had been involved in 40B Affordable Housing Program in Massachusetts, where 10% of his housing projects had to be affordable. He was in favor of the project.

Ruth Griffin of 479 Richards Avenue and Joe Kelly of 33 Union Street stated that workers lived in surrounding cities and towns because they could not afford to rent or buy in Portsmouth. They were both in favor of the project.

Jeff Kissel of 21 Wallace Road said he was representing the 603 Initiative and supported the project, in large part because of its diversity in type and price.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Veronica Lewis of Exeter said she was representing her mother, Catherine Moretti, who was a direct abutter and was against it because it would lower property values. She said the property was bought in the existing zoning and she was fearful setting a precedent.

Ed Miller of 5 Central Avenue, Kyle Langelier of 304 Leslie Drive and Steve Terhune of 641 Maplewood Avenue said they opposed the project for the following reasons: it would set a precedent for replacing single-family homes with oversized development; only six of the 30 units would be workforce housing and 60 or more vehicles would be added; it would change the neighborhood and lower property values.

Joseph Moretti representing his mother Catherine Moretti said he was strongly against the project. He said the topographical map wrong and that the structure would be 80' tall.

Mark (last name indecipherable) of 816 Maplewood Avenue said he was against the project because of the amount of variances requested and said it would be spot zoning.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

Vice-Chair Rheume asked for discussion. He said, among other things, that what the applicant was asking for was bold in terms of the current zoning, and he explained why. The applicant had gone before the Planning Board to make it a zoned business and failed. The abutters thought the applicant was trying to change the zoning, and he agreed that it was leaning toward rezoning. He said workforce housing and affordable housing were not the same thing. Mr. Mulligan said he had no problem with the two parking spaces and the two freestanding dwellings but did with the number of dwellings requested because it fed into the lot area per dwelling unit and the maximum structure height. He felt that 30 units and the square footage were a lot of relief and that he was comfortable granting three variances but could not see the hardship in the other three. Mr. Parrott agreed, noting that there was an extraordinary amount of pavement driven by the number of units. He said the City Council chose to zone it as SRB and it was not the Board's purpose to say that it wasn't appropriate. The Board was supposed to be a relief valve for the overly constricting small rules that applied to a lot, but the project was asking them to do a wholesale change in the character of the two combined lots, and he felt that it was a misuse of their process. He was also concerned about the size of the variances, the height differences and the number of units and felt that it was overly ambitious and not

appropriate for the lot. He said he would like to see a project where people could buy and own property and establish roots.

Chairman Witham stated that the applicant was put in a tough spot, as were the Board and the abutters. The applicant couldn't get a rezoning, and to expand the business district to include the lot made sense. He thought it was a lost opportunity on behalf of the City Council and that the abutters always seemed to win if there was overwhelming support for workforce housing. He didn't think the impact would be as adverse as everyone thought because it was a unique setting. The number of units was aggressive, and the number of dedicated workforce housing was on the low side. He thought the battle to rezone would best be fought through the City Council. Mr. Lee said he had 35 years of real estate experience and that the project made sense to him, especially since the applicant was willing to do a deed restriction.

*Vice-Chair Rheume made a motion to **grant** Variances 2, 5, and 6 and to **deny** Variances 1, 3 and 4. Mr. Lee seconded the motion.*

Vice-Chair Rheume read the three variances and stated that the most egregious to the concept of the STB zone was the two separate dwelling units. There was some leeway and recognition of hardship with the property due to its unique location, and he thought something more than a single-family home could be appropriate. He stated that granting the variances would not be contrary to public interest because the Board was usually adamant about single residences but had opened up more lately and recognized that there were unique properties with an opportunity to have a second dwelling. The NH State Legislature was looking at issues that could force the Board's hand eventually. Parking was to the rear of one building and was driven by the lot. The spirit of the Ordinance observed minor parking variances and two dwellings where one was allowed. Substantial justice would be met because the impact of those two conditions was not so that there was a massive public need to prevent them from happening relative to the owner's right to develop his property. Granting the variances would not diminish the value of surrounding properties because they were not detrimental to property values. The hardship was the depth of the property, the unit configuration, and the location between a business district and the highway, which made it unique from other properties.

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

Mr. LeMay said he would not support the motion because he didn't think it was appropriate for the Board to approve piecemeal variances that would not help the applicant achieve what he wanted to do. Once the variances were granted, the Board could be presented with another plan with a context where those variances wouldn't fit. He did not think it was appropriate for the Board to approve piecemeal variances that would not help the applicants achieve what they wanted to do.

*The motion to **grant** Variances 2, 5, and 6 **failed to pass** by a vote of 3-4 so that these requests were **denied**, with Mr. LeMay, Mr. Parrott, Mr. Johnson and Chairman Witham voting against the motion..*

Vice-Chair Rheume then read Variances 1, 3 and 4 and said they would require all five criteria to be met in terms of denial. As far as not being contrary to the public interest, there were arguments back and forth as to whether it was creating workforce housing or keeping the single-residency, and he felt that the single residency outweighed the desire for workforce housing in that particular location. There was some leeway in that location but not enough for what the public was getting out of workforce housing and the residences that surrounded it. The townhouse units were not respectfully lined up against the street. The back unit was too tall, and there were too many units and too much relief. The balance test was not served. As for meeting the spirit of the Ordinance, the amount of relief asked for was tremendous, 2,341 s.f. per dwelling unit where 15,000 s.f. was required. Thirty dwelling units where only a single-family one would be allowed was a huge amount of relief requested, and the structure height and topography failed as well.

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

*The motion to **deny** Variances 1, 3 and 4 was **granted** 6-1, with Chairman Witham voting against the motion..*

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#### **IV. OTHER BUSINESS**

There was no other business.

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#### **V. ADJOURNMENT**

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 10:45 p.m.*

Respectfully submitted,

Joann Breault  
Recording Secretary

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
SCHOOL BOARD CONFERENCE ROOM  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

**7:00 P.M.**

**FEBRUARY 16, 2016**

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

**MEMBERS EXCUSED:** None

**ALSO PRESENT:** Planning Department: Jane Ferrini

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**I. APPROVAL OF MINUTES**

- A) January 19, 2016
- B) January 26, 2016

*The two sets of minutes were **approved** with minor corrections by unanimous vote.*

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**II. OLD BUSINESS**

- A) Clarification of Variances granted for property located at 209 Clinton Street.

**DISCUSSION**

Mr. Moretti recused himself from the petition.

Chairman Witham reminded the Board that the setbacks were noted inaccurately and they were asked to accept the new dimensions approved in September 2015.

Pam Gould of 209 Clinton Street said the original drawings based on the pre-existing fence were approved and the addition was built. The surveyor she hired discovered that the lot line was wrong; otherwise, the petition met the original specifications.

Mr. LeMay asked whether the corner was the only area infringed upon, and Ms. Gould agreed but said they had thought they had 17 feet of setback on the other side of the building and would need a variation on that side as well. Chairman Witham asked about

a pin. Ms. Gould said there was a pin and that the tree had grown through the fence, so half the tree was on the neighbor's land.

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

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

### **DECISION OF THE BOARD**

Chairman Witham asked the Board whether they could just accept the clarification, based on what the Planning Department put before them. Mr. LeMay stated that it was done in good faith and didn't violate the spirit or intent of the variance, but he suggested that they do it as an equitable waiver. Chairman Witham agreed.

*Mr. LeMay made a motion to treat the request as an **equitable waiver**. Vice-Chair Rheume seconded the motion.*

Mr. LeMay stated that first, the violation was not noticed or discovered by the owner, agent, or municipal representative until after the structure in violation had been substantially complete. Second, the violation was not an outcome of ignorance of the law or Ordinance, failure to inquire, obfuscation, misrepresentation or bad faith on the part of the owner, agent, etc. but was instead caused by either a good faith error in measurement or calculation made by the owner or its agent. Third, Mr. LeMay said that the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of the property. Last, Mr. LeMay stated that, due to the degree of past construction or investment made in ignorance of the faces of the violation, the applicant has incurred significant expense that would be difficult to recoup, and the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require a correction.

Vice-Chair Rheume said there were two issues, the distance to the property line, which was reduced by 8 inches and was less than a 10% discrepancy. More concerning was the lot line, but the Board had recognized that the lot line was not up against the property line like the previous drawing showed, so they were comfortable with the addition. It would also pose a significant expense to the applicant to recoup the money spent on the design, so he found it satisfactory.

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

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### **III. PUBLIC HEARINGS – NEW BUSINESS**

- 1) Case #2-1  
Petitioners: Benjamin M. & Amanda J. Goss



- Property: 6 Pine Street  
Assessor Plan 159, Lot 47  
Zoning District: General Residence A  
Description: Replace garage and add connecting mudroom.  
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 nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.521 to allow a 3'± right side yard setback where 10' is required.

Mr. Moretti resumed his seat.

### **SPEAKING IN FAVOR OF THE PETITION**

Imelda Dench, representing the owners, and the owner Benjamin Goss were present to speak to the petition. Ms. Dench explained how the petition met the criteria.

Mr. Goss stated that Derek Durbin, a prior Board member and an abutter, sent an email to the Planning Department saying that he was in support of the project, and said he also had emails of support from the other neighbors

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

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

### **DECISION OF THE BOARD**

*Mr. Mulligan made a motion to **grant** the variances as presented and advertised. Mr. Parrott seconded the motion.*

Mr. Mulligan said it was a request for relief from the side yard setback which was substantial, but what presently existed was less than one foot and close to the neighboring dwelling, so he felt that it met all the criteria. Mr. Mulligan stated that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the essential characteristics of the neighborhood would remain residential. There would be no threat to the public's health, safety and welfare if granted. It would do substantial justice because the loss to the applicant would far outweigh any gain to the public if the applicant was required to redesign the proposed addition and garage to meet the side yard setback and push it against the existing dwelling to meet the setbacks. It would be unusual and not valuable or gratifying to the applicant. Granting the variances would not diminish the value of surrounding properties because the tastefully-designed garage and addition would make the property more valuable and would enhance the values of surrounding properties and get the structure away from the neighboring dwelling. Literal enforcement of the Ordinance would result in unnecessary hardship.

The small corner lot was very tight to the nearest abutter, so there were special conditions. There would be no fair and substantial relationship between the purpose of the setback ordinance and the application to the property. The use was a reasonable one, and the proposed garage and addition were more modest than typical ones.

Mr. Parrott said he concurred with Mr. Mulligan and felt that it was a modified infill project where most of the new construction was toward the middle of the lot, so there would be no effect on the neighborhood. It would be a nice upgrade to the house and would complement the rest of the neighborhood. Its proportion on the side was as small as could be, yet still achieved the desired results.

Mr. Rheume stated that the addition was very modest and the roofline was lower than the existing one. There was a hardship with the placement of the current home, and some other kind of addition on the back of the house would be more awkward than what was proposed. It was a logical place to put the addition and the neighbors supported it.

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

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- 2) Case #2-2  
Petitioner: Alden Properties LLC  
Property: 33 Columbia Street  
Assessor Plan 145, Lots 41 & 42  
Zoning District: General Residence C  
Description: Add two dwelling units on a merged lot to the existing three dwelling units.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.521 to allow 3,253± s.f. of lot area per dwelling unit where 3,500 s.f. per dwelling unit is required.

Mr. Mulligan recused himself from the petition.

### **SPEAKING IN FAVOR OF THE PETITION**

John Bosen representing the petitioner was present to speak to the petition and said they wanted to merge the lots and build a dwelling on them. He said the garage would not be living space and that they met all the parking requirements and didn't require setback relief. He explained in detail how the criteria would be met.

Vice-Chair Rheume noted that the relief requested was modest and asked whether they had considered the square footage per dwelling unit for the surrounding property. Mr. Bosen said they had not done measurements but felt that it was representative of the neighborhood. Mr. Johnson asked whether the garage had two floors of storage. Mr. Bosen said it had one floor of storage and emphasized that it would not be a living area.

Mr. LeMay asked whether the proposed units would be condominiums or rentals. Mr. Bosen said they would be condominiums and garages would be deeded with each unit. Pat (last name inaudible) of the Birchwood Condominium Association said he was concerned about street parking and also wanted to ensure that there were enough parking spaces for two units. Chairman Witham stated that the Planning Department had done a code review and no parking was requested as part of the variance, so he assumed that all the parking requirements were met. Mr. Johnson added that the Staff Report noted that ten parking spaces were required and nine were proposed. Mr. Bosen stated that they would meet or exceed the Parking Ordinance.

### **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**

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

Vice-Chair Rheume said the amount of relief was minor. There were two separate dwellings that were within the requirement of the Ordinance as determined by the Planning Department, and there was no relief for parking.

Vice-Chair Rheume stated that granting the variance would not be contrary to the public interest. Although the applicant had not taken a close look at the lot sizes of surrounding properties, Vice-Chair Rheume knew there were multi-family units on small lots on the street and that the lot area per dwelling unit was small and in keeping with the characteristics of the neighborhood. Granting the variance would observe the spirit of the Ordinance because the relief being sought was not excessive. It would do substantial justice and allow the owner to make full use of the two merged lots in a logical manner. It would not diminish the value of surrounding properties because the existing dwelling structure had been upgraded and the new structures would be a similar improvement and would increase surrounding property values or keep them neutral. The hardship test was met due to the unique configuration of the lot once the two buildings were merged. The overall square footage was large and could support at least one additional dwelling unit. The request for the second unit made sense due to the available space. There was ample lot coverage. There was no public interest that would outweigh the nature of the hardship, and it was a reasonable request.

Mr. Johnson said he concurred with Vice-Chair Rheume and thought it was a modest request. Chairman Witham said he would support it because, although it looked substantial, the actual variance and request were minimal.

*He suggested the stipulation that no living space would be included above the garage. Vice-Chair Rheume and Mr. Johnson agreed to add the stipulation to the motion.*

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

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3) Case #2-3

Petitioners: Natan Aviezri Revocable Trust, Debra Klein and Natan Aviezri,  
Trustees

Property: Middle Road at Ward Place (formerly 75 Monroe Street)

Assessor Plan 168, Lot 27 (merged from Lots 34 & 35)

Zoning District: General Residence A

Description: Construct a single-family home and garage on two re-merged lots.

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

1. A Variance from Section 10.521 to allow a lot area of 6,022± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,022± s.f. where 7,500 s.f. per dwelling unit is required.
3. A Variance from Section 10.521 to allow continuous street frontage of 93.6'± where 100' of continuous street frontage is required.

Mr. Mulligan resumed his seat.

### **SPEAKING IN FAVOR OF THE PETITION**

Attorney Francis Bruton and the applicant Natan Aviezry were present to speak to the petition. Attorney Bruton explained how the lot was really five lots and that they wanted to merge it into three lots and then two lots. He explained how the criteria were met.

Chairman Witham asked whether the Planning Board had indicated a preference for the garage doors, and Attorney Bruton said they had not. In answer to further questions from the Commission, Attorney Bruton stated that the smaller lot would have a single-family structure on it and that they would prepare a final plan of merger, which either the Planning Board or the City Council would approve.

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

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

### **DECISION OF THE BOARD**

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

Mr. LeMay stated that the straightforward petition squared away the five lots in terms of getting them unscrambled and put back together in a useful way and that the relief requested was a small amount. Mr. LeMay stated that granting the variance would not be contrary to the public interest and that the spirit of the Ordinance would be observed. It would not change the nature or characteristics of the neighborhood because there were

similar homes in the area and it was a reasonably-sized lot for the proposed home. Granting the variance would result in substantial justice because there would be no benefit to the general public by keeping it from being developed. It would not diminish the value of surrounding properties because after a year, it would look like it had always been there, and there would be no significant impact on the abutters. Relating to the hardship criteria, it was a corner lot with frontage on two streets, and it had a history of merging and unmerging. There was no public interest to balance against preventing the owner from developing the lot.

Mr. Moretti said he concurred with Mr. LeMay.

Chairman Witham requested that the Planning Board indicate their preference for the driveway cut, based on safety concerns.

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

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4) Case #2-4

Petitioners: Abbie J. & Lee M. Frank

Property: 169 Madison Street

Assessor Plan 145, Lot 53

Zoning District: General Residence C

Description: Construct rear addition.

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 2'6" ± left side yard setback where 0' is required.
3. A Variance from Section 10.521 to allow 40.12%± building coverage where 37%± exists and 35% is the maximum allowed.

### **SPEAKING IN FAVOR OF THE PETITION**

Chairman Witham asked the Board whether or not they wanted to evoke Fisher vs. Dover, and they said they did not.

The owners Lee and Abbie Frank were present to speak to the petition. Mr. Frank noted that their previous petition had been denied and explained how the changes would meet the criteria. He emphasized that the lot coverage was 42% less than requested originally and that he had overwhelming neighbor support.

Vice-Chair Rheume said there looked like there was plenty of room for parking two vehicles. Mr. Frank said the shed was large enough for a vehicle but wouldn't be a garage because the driveway could not be used to get to it.

David Gaddy of 173 Madison Street said he was a abutter and felt that there would be no decrease to his property values because the addition would be built far enough back.

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

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

**DECISION OF THE BOARD**

Chairman Witham told Mr. Frank that he appreciated his efforts to address the Board's concerns. He noted that the request for lot coverage was 41.2 ft± and that the City Inspector might require a little land for the rear door, so he was comfortable if it went up a little. Mr. Johnson also commended the applicant for a better application.

*Vice-Chair Rheume made a motion to grant the variances as presented and advertised. Mr. Mulligan seconded the motion.*

Vice-Chair Rheume said that the changes made him feel more comfortable and that he appreciated the sacrifices the applicant had made in losing a bedroom and the use of the garage. He felt that the smaller addition had a more authentic feel.

Vice-Chair Rheume stated that granting the variances would not be contrary to the public interest or the general characteristics of the neighborhood. By changing around the configuration and building it off the property line, 2.6 feet was less than what was required but more than adequate to give relief to the property line. He felt that the small addition was more in keeping with the neighborhood and would add more interest to the home. Granting the variances would observe the spirit of the Ordinance because it was reasonable to ask about 3% more. The side setback of 2-1/2' was substantial relief, but the existing structure was up against the property line. Substantial justice would be done because the owner had made some sacrifices. Granting the variance would not diminish the value of surrounding properties because the tasteful addition would add to and not detract from the value of surrounding properties. The property was unique, consisting of a long, narrow lot against the property line, which created the hardship. He felt that the proposed use was a reasonable one and that no public use would outweigh it.

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

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

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- 5) Case #2-5  
Petitioners: Robert R. & Elizabeth H. Macdonald  
Property: 209 Gosport Road  
Assessor Plan 224, Lot 10-12  
Zoning District: Single Residence A  
Description: Construction of a single-family residence.  
Requests: The Variances necessary to grant the required relief from the Zoning

Ordinance, or other required relief, including the following:

1. An Equitable Waiver of Dimensional Requirements as defined in RSA 674:33-a to allow the existing foundation of a dwelling structure to remain with an 18.7'± right side yard setback where 20' is required.
2. A Variance from Section 10.521 to allow an 18.7'± right side yard setback where 20' is required.

### **SPEAKING IN FAVOR OF THE PETITION**

John Chagnon of Ambit Engineering and the owners Robert and Elizabeth Macdonald were present to speak to the petition. Mr. Chagnon stated that they had helped the previous owners obtain permits, including setback relief. They bought the lot and modified the plan based on their house plans, and then discovered that the side setback was dropped in favor of the wetland setback and created a 18.7' setback where 20' was required. Mr. Chagnon emphasized that the violation wasn't noticed until the foundation was done and that it was a good faith error in measurement. He said the violation would be imperceptible and that the cost to correct it far outweighed any public benefit.

Chairman Witham said he wanted to address the equitable waiver first. He asked whether the relief sought was half of the base. Mr. Chagnon said it was a section of that base. In answer to Mr. Mulligan's questions of whether anything would be built on the lot next to it and when the applicant started pouring the foundation, Mr. Chagnon said a single-family house would be built and that the foundation was poured in December.

Mr. Chagnon then reviewed how the petition met the criteria. Mr. LeMay asked what the finished width of the house at the roof was. Mr. Chagnon said it was a 12" overhang, so the finished width was about 56 feet and the 12" overhang did not have to meet the setback requirement.

Thomas Frangos of 33 Gosport Road said he saw no adverse impact from the petition.

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

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

### **DECISION OF THE BOARD**

It was decided to approve the Equitable Waiver and criteria together.

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

Mr. Parrott noted that the situation was what the waiver was designed to deal with and that everything had been done right. An engineering error was made, resulting in a slight shift in the position. What was asked for was 1% of the distance, which was pretty small. The lot was a good-sized one, and the deviation from the plan would be imperceptible.

Granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the spirit was to deal with situations like the applicant's in a common-sense way and let the people build what they wanted as long as they didn't interfere with the neighbors. Substantial justice would be done because no public interest would be promoted if the application were denied. The project would be delayed and cause unnecessary expense for the owner. Granting the variances would not diminish the value of surrounding properties because the change was so small that it wouldn't be noticed, and he didn't see any plus-or-minus effect to surrounding properties. The house closest to the sideline was a lot closer to the road than the new house. As for unnecessary hardship, special conditions were that the house was already built, so it would be a considerable hardship for the owner if the Board told him to 'shorten the house'. Mr. Parrott felt that the application met the criteria.

Mr. Moretti said he concurred with Mr. Parrott and that the application passed all the tests. The small error was imperceptible to anyone.

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

6) Case #2-6

Petitioners: Portsmouth City Investment Realty Trust and Airgead Realty Trust,  
Paul & Christopher D. McInnis, Trustees, owners, Maplewood Ridge,  
LLC, applicant

Property: 678 Maplewood Avenue

Assessor Plan 220, Lots 89 & 90

Zoning District: Single Residence B

Description: Construct townhouses and an apartment building on two merged lots.

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

1. A Variance under Section 10.440 to allow multi-family dwellings containing 30 dwelling units where only a single family dwelling is allowed.
2. A Variance from Section 10.513 to allow two free-standing dwellings on a lot where only one free-standing dwelling is allowed.
3. A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,341± s.f. where a minimum of 15,000 s.f. per dwelling unit is required.
4. A Variance from Section 10.521 to allow a structure height of 48'± where 35' is the maximum allowed.
5. A Variance from Section 10.1114.32 to allow parking where vehicles entering or leaving a parking space must pass over another space or require the moving of another vehicle.
6. A Variance from Section 10.1113.20 to allow off-street parking spaces to be located between a principal building and the street.

Mr. Moretti recused himself from the petition.



**SPEAKING IN FAVOR OF THE PETITION**

Joseph Russell on behalf of owner was present to speak to the petition and introduced the owner Chris McInnis and the senior engineer Patrick Crimmins from Tighe and Bond. Mr. Russell reviewed the petition, noting that it would bring affordable housing to the City by including dedicated work force apartment units.

Mr. Crimmins explained to the Board how the two parcels would be merged, noting that there would be six individual townhouses with one parking space per unit that would be used in tandem. He said the public would not notice the parking situation. He also discussed the request for density for the building height.

Vice-Chair Rheume asked Mr. Crimmins about the easement for power lines. Mr. Crimmins said he didn't see the easement falling off the parcel. Vice-Chair Rheume asked whether the easement across the parking area crossed along the two adjoining parcels, and Mr. Crimmins said it was half and half and that there were no structures on the two adjoining parcels. In answer to Vice-Chair Rheume's question about whether the parcels were land-blocked, Mr. McGinnis said they were three separate lots.

Mr. Russell then reviewed the criteria and explained in detail how they would be met. He said that the proposed use would be allowed in the SRA zone and felt that the project would increase property values around it due to its history of vagrancy.

Vice-Chair Rheume asked whether there had been a previous effort to rezone the property. Mr. McInnis said when he bought the property in 2012, he thought the business line should be continued to Route 95, but the neighbors weren't in favor of it and he felt that the Zoning Board was the best way to take the project through. Vice-Chair Rheume asked what the status of the existing home in front was and its age, and Mr. McInnis said the house was rented monthly and was built before 1900.

In answer to Mr. Johnson's questions, Mr. Crimmins said the plan was representative of the 41% open space, that the traffic count was standard, that the elevation would be the highway's height and the building would have mechanical units on top of it.

Mr. Parrott asked whether the townhouses would be retained as rental units, and Mr. Crimmins agreed. Mr. Lee asked how long the workforce housing would last, and Mr. McInnis said it would last in perpetuity and that he would agree to a deed restriction.

Thomas Frangos of 33 Gosport Road said he had a construction business and had been involved in 40B Affordable Housing Program in Massachusetts, where 10% of his housing projects had to be affordable. He was in favor of the project.

Ruth Griffin of 479 Richards Avenue and Joe Kelly of 33 Union Street stated that workers lived in surrounding cities and towns because they could not afford to rent or buy in Portsmouth. They were both in favor of the project.

Jeff Kissel of 21 Wallace Road said he was representing the 603 Initiative and supported the project, in large part because of its diversity in type and price.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Veronica Lewis of Exeter said she was representing her mother, Catherine Moretti, who was a direct abutter and was against it because it would lower property values. She said the property was bought in the existing zoning and she was fearful setting a precedent.

Ed Miller of 5 Central Avenue, Kyle Langelier of 304 Leslie Drive and Steve Terhune of 641 Maplewood Avenue said they opposed the project for the following reasons: it would set a precedent for replacing single-family homes with oversized development; only six of the 30 units would be workforce housing and 60 or more vehicles would be added; it would change the neighborhood and lower property values.

Joseph Moretti representing his mother Catherine Moretti said he was strongly against the project. He said the topographical map wrong and that the structure would be 80' tall.

Mark (last name indecipherable) of 816 Maplewood Avenue said he was against the project because of the amount of variances requested and said it would be spot zoning.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DECISION OF THE BOARD**

Vice-Chair Rheume asked for discussion. He said, among other things, that what the applicant was asking for was bold in terms of the current zoning, and he explained why. The applicant had gone before the Planning Board to make it a zoned business and failed. The abutters thought the applicant was trying to change the zoning, and he agreed that it was leaning toward rezoning. He said workforce housing and affordable housing were not the same thing. Mr. Mulligan said he had no problem with the two parking spaces and the two freestanding dwellings but did with the number of dwellings requested because it fed into the lot area per dwelling unit and the maximum structure height. He felt that 30 units and the square footage were a lot of relief and that he was comfortable granting three variances but could not see the hardship in the other three. Mr. Parrott agreed, noting that there was an extraordinary amount of pavement driven by the number of units. He said the City Council chose to zone it as SRB and it was not the Board's purpose to say that it wasn't appropriate. The Board was supposed to be a relief valve for the overly constricting small rules that applied to a lot, but the project was asking them to do a wholesale change in the character of the two combined lots, and he felt that it was a misuse of their process. He was also concerned about the size of the variances, the height differences and the number of units and felt that it was overly ambitious and not

appropriate for the lot. He said he would like to see a project where people could buy and own property and establish roots.

Chairman Witham stated that the applicant was put in a tough spot, as were the Board and the abutters. The applicant couldn't get a rezoning, and to expand the business district to include the lot made sense. He thought it was a lost opportunity on behalf of the City Council and that the abutters always seemed to win if there was overwhelming support for workforce housing. He didn't think the impact would be as adverse as everyone thought because it was a unique setting. The number of units was aggressive, and the number of dedicated workforce housing was on the low side. He thought the battle to rezone would best be fought through the City Council. Mr. Lee said he had 35 years of real estate experience and that the project made sense to him, especially since the applicant was willing to do a deed restriction.

*Vice-Chair Rheume made a motion to **grant** Variances 2, 5, and 6 and to **deny** Variances 1, 3 and 4. Mr. Lee seconded the motion.*

Vice-Chair Rheume read the three variances and stated that the most egregious to the concept of the STB zone was the two separate dwelling units. There was some leeway and recognition of hardship with the property due to its unique location, and he thought something more than a single-family home could be appropriate. He stated that granting the variances would not be contrary to public interest because the Board was usually adamant about single residences but had opened up more lately and recognized that there were unique properties with an opportunity to have a second dwelling. The NH State Legislature was looking at issues that could force the Board's hand eventually. Parking was to the rear of one building and was driven by the lot. The spirit of the Ordinance observed minor parking variances and two dwellings where one was allowed. Substantial justice would be met because the impact of those two conditions was not so that there was a massive public need to prevent them from happening relative to the owner's right to develop his property. Granting the variances would not diminish the value of surrounding properties because they were not detrimental to property values. The hardship was the depth of the property, the unit configuration, and the location between a business district and the highway, which made it unique from other properties.

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

Mr. LeMay said he would not support the motion because he didn't think it was appropriate for the Board to approve piecemeal variances that would not help the applicant achieve what he wanted to do. Once the variances were granted, the Board could be presented with another plan with a context where those variances wouldn't fit. He did not think it was appropriate for the Board to approve piecemeal variances that would not help the applicants achieve what they wanted to do.

*The motion to **grant** Variances 2, 5, and 6 **failed to pass** by a vote of 3-4 so that these requests were **denied**, with Mr. LeMay, Mr. Parrott, Mr. Johnson and Chairman Witham voting against the motion..*

Vice-Chair Rheume then read Variances 1, 3 and 4 and said they would require all five criteria to be met in terms of denial. As far as not being contrary to the public interest, there were arguments back and forth as to whether it was creating workforce housing or keeping the single-residency, and he felt that the single residency outweighed the desire for workforce housing in that particular location. There was some leeway in that location but not enough for what the public was getting out of workforce housing and the residences that surrounded it. The townhouse units were not respectfully lined up against the street. The back unit was too tall, and there were too many units and too much relief. The balance test was not served. As for meeting the spirit of the Ordinance, the amount of relief asked for was tremendous, 2,341 s.f. per dwelling unit where 15,000 s.f. was required. Thirty dwelling units where only a single-family one would be allowed was a huge amount of relief requested, and the structure height and topography failed as well.

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

*The motion to **deny** Variances 1, 3 and 4 was **granted** 6-1, with Chairman Witham voting against the motion..*

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#### **IV. OTHER BUSINESS**

There was no other business.

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#### **V. ADJOURNMENT**

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 10:45 p.m.*

Respectfully submitted,

Joann Breault  
Recording Secretary