

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

**7:00 P.M.**

**JUNE 21, 2016  
TO BE RECONVENED  
JUNE 28, 2016**

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

**MEMBERS EXCUSED:**

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

---

**I. APPROVAL OF MINUTES**

- A) May 17, 2016
- B) May 24, 2016

*It was moved, seconded, and passed by unanimous vote to **approve** both sets of minutes.*

---

**II. OLD BUSINESS**

- A) Request for Rehearing regarding property located at 150 Route One By-Pass.

Chairman Rheaume stated that the petition was to construct a 4-story multi-family building and said the Board voted to deny the variances, so the applicant submitted an appeal. Mr. Mulligan said he wasn't at the meeting and couldn't speak to the Board's decision on the variance application, but noted that the applicant was also requesting a rehearing on the Board's decision not to hear and proceed with the application for a special exception. He said he reviewed the Ordinance provision and agreed with the applicant that the provision did apply and felt that the applicant was entitled to go forward for a special exception. Mr. McDonell agreed with Mr. Mulligan and said he didn't think the intent of the motion was to say that Section 10.335 did not apply but was more to say that there was impact on adjacent properties that was not less adverse than the impact on the adjacent use. He said the Board didn't go through each of the

Minutes Approved July 19, 2016

standards under Section 10.232.20, but there was discussion about the scale of the building. He said that the intent was not to cut off the applicant and say the Board could not hear the application for the special exception.

Vice-Chairman LeMay agreed and said the Board was not considering a legal technicality as to whether or not they could consider under that Ordinance that it wouldn't satisfy the requirements. He also agreed that the way the vote was taken was that it didn't apply. He asked whether the Board could clarify that's what the intention was. Mr. Mulligan said he didn't think they could clarify it because if they made a different decision, it would generate a new set of appeal rights. He thought the Board had to decide whether to rehear it or not. Vice-Chairman LeMay said they could clarify their record at that time. Chairman Rheume said the Board would be required to hold a new hearing on it. It was a Request for Rehearing and if the Board felt they were in error, they could rehear it at the July meeting.

Mr. Parrott said it wasn't the first time the Board had one of those offers, i.e., trying for one thing, and if it didn't pass, trying for another. He thought that perhaps it wasn't a good technique to use because it caused confusion and suggested that the Board stop doing it. Chairman Rheume agreed that the particular paragraph was confusing the way it was worded and left a wide open opportunity for an applicant to go before the Board and say the property was nonconforming and that he wanted to do something different that was nonconforming. The Board further discussed it.

Mr. Parrott noted that previous applicants had requested the Planning Department to present it in that format, and felt that it would be good to ask the Planning Department not to do it again. Chairman Rheume said he could discuss it with the Planning Department or schedule a meeting with them and the Board.

*Mr. Mulligan moved to **grant** the Request for Rehearing for the Special Exception only. Vice-Chairman LeMay seconded the motion.*

*The motion **passed** by a vote of 7-0.*

---

### III. PUBLIC HEARINGS – OLD BUSINESS

A) Case #4-13

Petitioners: Blueberry Lafayette Investors LLC & Edward Walsh, owners, William P. Walsh, applicant

Property: 3605 (3607) Lafayette Road

Assessor Plan 298, Lot 2

Zoning District: Gateway & Rural

Description: Motor vehicle repair

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

**Withdrawn**

1. A Special Exception under Section 10.440, Use #11.20 to allow a motor vehicle repair use in a district where the use is allowed only by Special Exception.
2. A Variance from Section 10.1111 to allow a change in use that does not meet the requirements for off-street parking.
3. A Variance from Section 10.843.12 to allow more than two 40' wide curb cuts or access or egress points on each abutting street.
4. A Variance from Section 10.843.21 to allow areas for parking, outdoor storage and outdoor display of vehicles or equipment to be set back less than 40 feet from the street right-of-way.

Chairman Rheume noted that the application was withdrawn by the applicant.

---

B) Case #4-9

Petitioner: Michael De La Cruz

Property: 75 Congress Street (63 Congress Street)

Assessor Plan 117, Lot 5

Zoning District: Character District 5, Downtown Overlay District

Description: Construct five residential use dormers and one office use dormer, with walkways and decks. Restore pediments.

Requests: The Variances and/or Special Exceptions 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, enlarged or structurally altered without conforming to the Ordinance.
2. A Variance from Section 10.5A43B and Section 10.5A21.22 to allow the following building height where the maximum building heights allowed per Map 10.5A21B are 40' for a 2-3 stories height requirement area and 45' for a 2-3 stories (short 4<sup>th</sup>) height requirement area:
  - a. 62'11" for the proposed pediments
  - b. 64'6" for the proposed office dormer, and
  - c. 60'5" for the proposed residential dormers

*(This petition has been revised since its initial publication, with the changes indicated in italics. The revised petition was postponed for additional information at the June meeting)*

Chairman Rheume read the petition into the record. Mr. Johnson recused himself from the petition.

*Vice-Chairman LeMay moved to **accept** the postponement.* He said it was originally postponed to give the applicant time to gather information that the Board requested.

*Mr. Mulligan seconded the motion.* He said he concurred with Vice-Chairman LeMay.

*The motion **passed** unanimously, 7-0.*

---

**IV. PUBLIC HEARINGS – NEW BUSINESS**

1) Case #6-1

Petitioners: Colette TM Foley Revocable Trust, John D. & Colette TM Foley,  
Trustees

Property: 25 Lafayette Road  
Assessor Plan 152, Lot 3

Zoning District: General Residence A

Description: Raising chickens.

Requests: The Variances and/or Special Exceptions necessary to grant the  
required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.440, Use #17.20 to allow the keeping of chickens where this use is not allowed.

**SPEAKING IN FAVOR OF THE PETITION**

The applicant Colette Foley stated that she wanted to raise six chickens as pets because they were easy to train and she wouldn't have to use pesticides. She addressed the criteria and said the yard was fenced in and the coop would be hidden.

Mr. Moretti asked whether there would be any roosters, and Ms. Foley said no. In answer to Mr. Mulligan's questions, Ms. Foley said the intention was to tuck the coop into the ell behind the garage. She said the structure coming out of the garage was a small deck, and there was a brick patio between the house and the garage. She said she had discussed the coop with her neighbors and had received no negative feedback.

**SPEAKING IN OPPOSITION TO THE PETITION**

Dennis Souto of 218 Willard Avenue stated that he was opposed to the petition because the neighborhood already had a lot of pets.

Jody Kahn of 222 Willard Avenue said she was concerned about the potential for noise, odor, and attracting predators as well as the impact to property values.

Anne Souto of 218 Willard Avenue stated that she could see the back of the property and already had a hard time with chipmunks in her yard. She said her main concern was rodents and keeping them away from her house.

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

Ms. Foley stated that the chicken feed would be inside the coop and not spread around the outside, so it would not attract rats or chipmunks.

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

**DECISION OF THE BOARD**

Mr. Mulligan said it seemed like the applicant had not provided much of a showing for unnecessary hardship. He said the Board had previously been lenient in dealing with the unnecessary hardship criteria concerning applications with domestic chickens in an urban environment because there was almost never any opposition, but in Ms. Foley's case, there was some opposition that was not unreasonable. He said he didn't see the special conditions of the property that distinguished it from others in the area and wasn't sure what the justification from a hardship perspective was in granting the variance.

Mr. Lee said he grew up on a farm and thought they were quiet, so he didn't see it as a big issue because the coop would be closed and property maintained.

Mr. Johnson said he agreed about heeding the neighbors' concerns but thought the coop site was appropriate and would be well shielded. He said he could support a stipulated number of chickens but also agreed that he didn't see a major hardship. Mr. Lee noted that the applicant said there was an existing coop in the past, so the use was there before.

Mr. Parrott said someone would have six large, noisy dogs and no one could have a legal concern about it, but chickens were innocuous, quiet critters. He agreed that the hardship was difficult to see but felt it was a benign use.

Chairman Rheume said he was torn because he thought the Board needed to work with the Planning Board to get a long-term resolution on whether chickens were appropriate in the City. He said they were not allowed at all in the current Ordinance, but the Board had approved every petition that had come before them. He noted that the yards kept getting smaller with each application, but in the applicant's case, the property was open and had some distance between the abutters and the coop, so he could approve the application.

*Mr. Johnson moved to **grant** the variance for the petition as presented and advertised, with the following stipulations:*

- 1) That there be no roosters, and*
- 2) The maximum of hens would be six.*

*Mr. Parrott seconded the motion.*

Mr. Johnson said he echoed the Board's comments and felt that the minimal amount of hens wouldn't affect the special characteristics of the neighborhood or the public's health, safety and welfare. He thought it was a minimal request due to the size and siting of the coop and wouldn't have much effect on the surrounding properties. He stated that granting the variance would do substantial justice because the property was a good-sized one and had a previous similar use, and it was within the right of the owner to make use of her backyard in that manner. He did not feel that the scales tipped in the opposite direction to negatively affect anyone else. If the property was smaller or closer in proximity or had a larger quantity of chickens, there could be an argument for affecting the neighborhood. He noted that the applicant could have six other loud pets, and he felt that the hardship would be in not being able to utilize the property in the manner that the applicant had a right to.

Mr. Parrott said he concurred with Mr. Johnson and referred to his previous comments, adding that both adjacent yards were vacant and well behind the house, and there was fencing and vegetation that buffered the property, so he felt that those factors argued for approval. He said he also agreed that it was time for the Planning Board to get more definitive guidelines for that type of application.

Chairman Rheume said he would support the application because there was some wide open space in the neighboring properties and the coop would be shielded, which should help with the noise concerns.

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

---

2) Case #6-2

Petitioner: 30 Maplewood LLC

Property: 30-46 Maplewood Avenue

Assessor Plan 125, Lot 2

Zoning District: Character District 4, Downtown Overlay District

Description: Continue parking use on subdivided lot.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440 to allow a surface parking lot as a principal use where such use is not allowed.
2. A Variance from Section 10.5A44 to allow a parking lot that does not comply with the requirements of the Ordinance.

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

Attorney Paul McEachern representing the applicant stated that the property was adjacent to a mixed-use building and had been granted preliminary subdivision by the Planning Department. He said the requirement was to have a separate lot for the new construction, and a variance was needed to allow the current parking that had existed there for years to continue until the building permit was issued for the new building. When the building was completed, the parking would be underground. He reviewed the criteria.

Vice-Chairman LeMay asked who would park there in the next few months. Attorney McEachern said it would be the construction workers and perhaps the VFW members in the evenings, but not the public. He further explained that there would be a temporary laydown area in the lot and that the lot had surplus parking on it. Vice-Chairman LeMay asked about curb cuts. Attorney McEachern said there was a curb cut on Deer Street and on Bridge Street, which would remain.

Mr. Mulligan asked whether the 30 Maplewood Avenue unit was mixed resident and commercial, and Attorney McEachern agreed. In answer to further questions from Mr. Mulligan, he said that the residents all had dedicated parking spaces on the corner of Bridge and Deer Streets and that the lot would have associated parking when it was developed.

Mr. Parrott asked what the address would be and if the entire parking required for the new building would be underground. Attorney McEachern said the address would be 46 Maplewood Avenue and the parking would either be underground or surface parking.

Chairman Rheaume asked whether the new building would come before the Board for any other relief, and Attorney McEachern said he did not believe it would.

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

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

### **DECISION OF THE BOARD**

Chairman Rheaume reminded the Board that if the petition were granted, it would be in perpetuity for the life of the property.

*Mr. Moretti moved to **grant** the variances for the petition as presented and advertised, and Mr. Parrott seconded the motion.*

Mr. Moretti stated that granting the variance would not be contrary to the public interest because it was currently a parking lot that had existed for a number of years and the public would not see anything different. The spirit of the Ordinance would be observed because the property was on a corner of a busy street and had been a parking lot for several years, and no one in the neighborhood or passing by would recognize any change. Granting the variance would do substantial justice because the petition was triggered by the Planning Department and the existing parking lot would remain one until construction began. He said property values would not be diminished because the VFW had used it off and on in the past and the hotels across the street wouldn't see anything different. He said it was a reasonable use of the property and it would alleviate traffic off the street and move it off the public parking lots.

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

Mr. Mulligan said he would support it because the hardship had to do with the purpose of the Ordinance prohibiting surface parking to encourage development. He said the applicant was trying to develop the property and discourage empty surface parking throughout downtown, so there was no fair and substantial relationship between the purpose of prohibiting surface parking and its application to the property. He said it might last in perpetuity, but the worst thing that could happen would be an additional downtown parking need, and the City already had a parking crisis.

Chairman Rheaume said he would support the petition, noting that it was a chicken and egg situation. To develop the property, the applicant had to subdivide, but in order to subdivide, the parking variance was needed.

*The motion **passed** by a vote of 7-0.*

---

## 3) Case #6-3

Petitioners: Jason Combs & Meghan Rose J. Parks

Property: 834 Middle Road

Assessor Plan 232, Lot 55

Zoning District: Single Residence B

Description: Construct new single-family home.

Requests: The Variances and/or Special Exceptions 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, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.516.10 to allow a secondary front yard setback of 12.8'± where 17.7' is required.
3. A Variance from Section 10.521 to allow a rear yard setback of 22'± where 30' is required.

**SPEAKING IN FAVOR OF THE PETITION**

The contractor Matt Silva representing the applicant stated that the property needed a lot of code upgrades, so they were requesting a full demolition of the home in order to build one with higher energy standards and more curb appeal. He reviewed the criteria in detail and said the petition would meet all of them.

Chairman Rheume asked whether the ledge was the reason for proposing to move the home further away from Swett Avenue, and Mr. Silva agreed that it was.

Scott Theurer of 790 Middle Road said he was very much in favor of the project because it would be in keeping with the neighborhood's improvements.

Patrick Collins of 820 Middle Road said he was a direct abutter and in support because the new structure would increase property values.

Steve Loring said he represented the nearby Adventist Church and understood why the applicant wanted to upgrade because the ledge also affected his church.

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

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

**DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variances for the petition as presented and advertised, and Mr. Johnson seconded the motion.*



Mr. Mulligan stated that the application had to do with a number of setback variances driven by the size of the lot and the existing structure, which was already nonconforming as to setbacks. He said that granting the variance would not be contrary to the public interest or the spirit of the Ordinance because the essential characteristics of the neighborhood would not change, and the public's health, safety and welfare would not be impacted. It would result in substantial justice because the loss to the applicant if denied would not be outweighed by any gain to the public, and if the Board required the applicant to meet the setbacks, it would force the project into a small building envelope. He said there were topographical issues that would compromise the backyard. Granting the variance would not diminish values of surrounding properties because the new construction would improve the value of properties. The literal enforcement of the Ordinance would result in unnecessary hardship because the special conditions of the property were that it was a very small cottage on a corner lot that had to comply with multiple setbacks, and the topography of the lot drove the proposed siting of the new structure. There would be no fair and substantial relationship between the setback requirements and the application to the property.

Mr. Johnson concurred with Mr. Mulligan, noting that the building looked large in the drawings but actually wasn't, and it would be a neighborhood with diverse building sizes.

*The motion passed by a vote of 7-0.*

---

- 4) Case #6-4  
Petitioners: Marc G. Goulet, owner, Stephanie A. Lane, applicant  
Property: 4 Melbourne Street  
Assessor Plan 233, Lot 18  
Zoning District: Single Residence B  
Description: Allow massage therapy use as a Home Occupation.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Special Exception under Section 10.440, Use 19.22 to allow a Home Occupation II in a district where it is allowed by special Exception.

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

The applicant Stephanie Lane stated that she was the owner of a downtown massage parlor but parking was an issue, so she needed a special exception to continue her massage business in her home. She said she had an average of one client a day for an hour and that parking would not be an issue, and she noted that there would be no signage, no storm water runoff, and no use of toxic materials.

Vice-Chairman LeMay asked what the hours of operation were, and Ms. Lane said they were between 10:00 a.m. and 5:00 p.m. Mr. Johnson asked whether the therapy room would be used for any reason other than business, and Ms. Lane said it would not.

Chairman Rheume asked how long a typical appointment was, and Ms. Lane said it was an hour, with one client a day.

The property owner Marc Goulet stated that Ms. Lane had a large and loyal following, and that one client a day would be an easy in-and-out.

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

Joann Braun said she represented her aunt at 2 Melbourne Street and her mother at 30 Hampshire Road, who were both abutters. She said one client would not be a problem but more than one would because it was a residential district. She said it would affect property values by increased traffic flow and noise, and she emphasized that if the house was sold, it would be disclosed that it had a home occupation, which might limit the number of buyers. She also thought it might set a precedent. She said there were four advertisements in the Portsmouth Herald indicating that there was motorcycle storage on the property and wondered whether that counted as a separate business. She mentioned that there were a lot of flags on the property and said she was also concerned about retaliation from the applicant.

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

Ms. Lane said she had American and New Hampshire flags on her property. She said she had a survey done, during which a tree was cut down and broke the abutter's clothesline, but she had apologized and offered to replace it, so she didn't understand why there was a fear or retaliation. She also noted that she had letters from other neighbors who supported her petition.

Mr. Lee asked Ms. Lane to confirm that she would have a maximum of one client a day. Ms. Lane agreed. Chairman Rheume asked whether Ms. Lane would agree to a stipulation of one client per day, and Ms. Lane said she would.

Ms. Braun said she would not oppose the petition as long as it was just one client a day.

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

### **DECISION OF THE BOARD**

Mr. Johnson stated that he thought it was straightforward because massage was a low-impact, peaceful atmosphere in which clients didn't arrive with additional guests. He said he didn't think it would be necessary to stipulate that it would be only one client a day. He also noted that the property aligned itself to an influx of 1-3 cars per day.

*Mr. Johnson moved to **grant** the Special Exception for the petition as presented and advertised, with the following stipulation:*

- 1) That there be only one client per day.*

*Mr. Lee seconded the motion.*

Mr. Johnson said it was a permitted use and he didn't see any issues of adjacent property fire, toxic materials, and so on, because standard household materials would be used. There would be no detriment to the property value or change in the essential characteristics of the neighborhood because one visitor a day would not negatively impact the neighborhood. There would be no signage, and no traffic safety hazard or excessive demand on municipal services because of one client a day. Significant storm water runoff to adjacent properties would not be an issue.

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

*The motion passed by a vote of 7-0.*

---

5) Case #6-5

Petitioners: Linda & John Leland

Property: 26 Thaxter Road

Assessor Plan 166, Lot 37

Zoning District: Single Residence B

Description: Covered front porch/entryway.

Requests: The Variances and/or Special Exceptions 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, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow an 18'± front yard setback where 30' is required.
3. A Variance from Section 10.521 to allow 31.39%± building coverage where 20% is the maximum allowed.

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

The owner John Leland said he wanted to enhance the property's appearance and make it more in keeping with the neighborhood. He noted that there was water in the basement and a porous cinder-block foundation and said the covered porch would mitigate some of the water issues and the non-porous walkway would be eliminated. He said the abutters were in favor of the project. He reviewed the criteria and said they would be met.

Chairman Rheume said the drawing showed the proposed floor plan at 20'x8' deep instead of 22'x8'. Mr. Leland said the correct dimensions were 22'x8' and that he would notify the contractor.

Debbie Jennings of 63 Thaxter Road stated that all the homes on the same side as the property were of a similar style, with porches or covered entryways, and she felt that the front porch would improve the home's curb appeal and the neighborhood as well.

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

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

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

**DECISION OF THE BOARD**

*Vice-Chairman LeMay moved to **grant** the variances for the petition as presented and advertised, and Mr. Parrott seconded the motion.*

Vice-Chairman LeMay said the petition was straightforward and felt that the porch was an appropriate size for the building and consistent with the neighborhood. He said granting the variances would not be contrary to the public interest and the spirit of the Ordinance because the essential characteristics of the neighborhood would not change and the curb appeal would be improved. Substantial justice would be done because no public benefit would outweigh the applicant's benefit. Surrounding property values would not be diminished because the upgrades would make the structure more consistent with the neighborhood and help abutter property values. Literal enforcement would result in unnecessary hardship due to the size of the lot and the existing home on it. He said there was no public interest in keeping the setback dimensions as severe as the zoning request, and he felt that it satisfied the intent of the zoning.

Mr. Parrott said he concurred with Vice-Chairman LeMay and added that it would be an appropriate upgrade and a credit to the neighborhood.

*The motion **passed** by a vote of 7-0.*

## 6) Case #6-6

Petitioners: Cristin Pugliese

Property: 5 Buckminster Way

Assessor Plan 282, Lot 6-23

Zoning District: Single Residence A

Description: Rental of a single family residence.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440 to allow a two family dwelling where only a single family dwelling is permitted.
2. A Variance from Section 10.521 to allow a 21,997.8± s.f. lot area per dwelling unit where 43,560 s.f. (1 acre) is required.

**SPEAKING IN FAVOR OF THE PETITION**

The owner Cristin Pugliese stated that she wanted to rent out her mother-in-law space and felt that access dwelling unit rentals were supported in Portsmouth. She noted that she would face a hardship because the State law would not go into effect until the following June. She said she would not change the home's dimensions or parking space and simply wanted to rent the space out until her children settled in the area, at which time they would take over the house and she would live in the unit. Ms. Pugliese noted that her

neighbors and misconceptions because the rental was advertised as a duplex instead of a mother-in-law unit. She said the Planning Board inspected it, and she referenced her submitted letter noting how the application met the criteria.

Vice-Chairman LeMay asked how the addition was arranged. Ms. Pugliese said the outside entrance to the second unit was off the driveway and went into the garage rather than the main living space. She noted that someone could go through the garage to get into the main home. Ms. Pugliese said the accessory unit had two stories and was a bit narrower than the garage, and that it was originally an addition.

Mr. Mulligan asked whether a building permit was pulled to install a full kitchen in the accessory unit. Ms. Pugliese said she had electrical and mechanical permits.

Chairman Rheume asked whether the kitchen was installed in 1998, and Ms. Pugliese agreed. Chairman Rheume noted that the 1998 application referenced other portions of the addition but didn't mention a kitchenette, which made it a livable dwelling unit. He asked why Ms. Pugliese had a different contractor, and Ms. Pugliese said the original contractor didn't follow through. She said she was charged for the kitchenette inspection.

Mr. Moretti noted that the 1998 form said that the structure would remain a single-family dwelling and asked whether a building permit was pulled for a second dwelling, but Ms. Pugliese said she didn't know.

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

John Kilroy of 25 Buckminster Way said he directly abutted the property and was opposed to the project. He had a petition signed by 32 neighbors who were also opposed. He also had a copy of the Portsmouth Herald ad that described the property, which he gave to the Board. Mr. Kilroy asked Chairman Rheume whether the application was a variance for rezoning to a 2-family house and not an accessory dwelling, and Chairman Rheume said the City was yet to adopt that Ordinance. Mr. Kilroy concluded that the two-family house would affect the neighborhood because it would have twice the home residents, traffic, and noise and would double the density per acre. He said the septic system was for a 4-bedroom home, so if the two-family home went through, it would be detrimental to the neighborhood and hurt surrounding property values by setting a negative precedent.

Nate Sparks of 207 Buckminster Way said the project would add traffic to the street and impact the spirit of the Ordinance by adding renters to the residential neighborhood.

Tom Safford of 150 Buckminster Way said he was concerned about the impact on property values because the neighborhood was unique and adding a dual residence would impact it. He also thought the septic system was an issue.

Julie Ward of 186 Buckminster Way said her biggest concern was making the structure a multi-family dwelling and setting a precedent.

Andrew Christo of 46 Buckminster Way said he was concerned about setting precedents.

Jay Longtin of 258 Buckminster Way, Alfred Yezbick of 276 Buckminster Way, and Joanne Muldari of 39 Buckminster Way said they echoed the previous comments and were concerned about setting a precedent and renters.

Tricia Famolare of 228 Buckminster Way said she agreed with all her neighbors.

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

Deann Tuttle said she was Ms. Pugliese's sister and that the septic was updated when the addition was added. She said it wasn't the applicant's intent to turn the home into a dual dwelling, and she noted that there was already a multitude of cars in the neighborhood.

Wendy Formichelli of 550 Ocean Road said the neighborhood was experiencing transitional family sizes and composition and also noted that it was expensive to live in Portsmouth, so room rentals were alternatives.

John Kilroy of 25 Buckminster Way said he only saw the original septic tank in the Planning Department documents.

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

### **DECISION OF THE BOARD**

Mr. Mulligan asked whether the State law would go into effect the following June, and Chairman Rheume said it would. They further discussed how the City should come to terms with how the issue would be dealt with, noting that homeowners would eventually be able to create accessory dwelling units attached to the primary home. Vice-Chairman LeMay said it wasn't relevant to that evening's discussion because it was a year away. Mr. Mulligan said the amount of relief requested was significant enough that it was appropriate to require the applicant to sit tight until the City filled in the blanks. He said if the Board went by the existing Ordinance, the applicant would have half the lot size needed for each dwelling. Mr. Lee said he didn't think it would change the zoning of the neighborhood and asked whether the tenant had to be a relative. Chairman Rheume said non-related parties could be in the adjacent unit. Mr. Parrott asked if there was a covenant or association agreement and was told that there wasn't. Mr. Moretti asked whether additional inspection requirements should be stipulated. Chairman Rheume said there could because there was evidence that a kitchen sink had been approved.

Mr. Parrott said he was concerned that work was done to the septic system yet there was no evidence in the record that it was permitted, and he was also concerned that some additional work was done on it without the City's or State's approval. He noted that the signature on the 1998 building permit belonged to someone who had retired. Mr. Johnson said the 1999 documentation referenced a kitchen sink, range hood and

dishwasher and was signed by a City official, so he thought the property could have had special conditions that would allow the Board to consider the application.

Chairman Rheume said it was a difficult case because what the applicant was requesting would most likely be allowable in a year, but the existing relief asked for was substantial. Mr. Lee said it was a single-family neighborhood, and changing one house to a duplex would have a big impact on the property values from a real estate perspective.

*Vice-Chairman LeMay moved to **deny** the variances for the petition as presented and advertised, and Mr. Lee seconded the motion.*

Vice-Chairman LeMay said he understood that in a year, the application might come back as a special exception, but the Board would have the facts in front of them, and he was concerned that the application was to make the dwelling a duplex, which would be forever. He said he agreed that there were permits that were a bit sketchy, but he didn't find them persuasive. He said the essential characteristics of the neighborhood would be altered and that the general public had an interest in maintaining the zoning because property values would probably be diminished. He concluded that the literal enforcement of the zoning was a necessary hardship in that case and that no particular characteristics of the property distinguished the applicant's property from any other.

Mr. Lee said he concurred with Vice-Chairman LeMay and felt that the duplex would have a huge impact on the whole neighborhood.

Chairman Rheume said he would support the motion and asked whether the Board should try to perceive what the future would offer in terms of the new laws, or would they be more conservative and wait for the legislative process to be implemented. He said it could be a special exception but he wasn't ready to be legislatively proactive. Mr. Parrott said the Board could be sympathetic to personal circumstances, but there was no hint of it in any of the criteria. He said variances were permanent and were not simply for present owners, who could turn around and sell the property the next day. He said it was a 100% single-family residency.

*The motion **passed** by a vote of 5-2, with Mr. Mulligan and Mr. Johnson voting against the motion.*

- 
- 7) Case #6-7  
 Petitioner: Richard P. Fusegni  
 Property: 201 Kearsarge Way  
 Assessor Plan 218, Lot 5  
 Zoning District: Single Residence B  
 Description: Construct home on one lot of a three-lot subdivision.  
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.521 to allow a front yard setback of 15'± where 30' is required.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Douglas Macdonald representing the owner stated that they wanted to subdivide the lot into three lots. He reviewed the setback issues and said the primary front yard would be on Main Road with the secondary lot facing Kearsarge Way. The variance for a 15' setback would make the building envelope on each lot consistent, and the subdivision would have a significant portion devoted to conservation.

Mr. Mulligan confirmed that the existing dwelling would be raised and replaced and that the edge of pavement was 15 feet off the property line.

**SPEAKING IN OPPOSITION TO THE PETITION**

Debra Regan of 43 Mangroves Street said she lived next door to the applicant and was concerned about putting three houses on a small piece of property because her house had the lowest setting in the neighborhood, which caused rain or runoff to end up in her backyard. She asked where the runoff would go.

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

Attorney Macdonald stated that a lot of the vegetation would remain intact. He also noted that the Planning Board had reviewed the plan for subdivision approval and stipulated a berm for drainage issues. Chairman Rheume confirmed that the Planning Board was doing just a subdivision review and not a formal site plan review.

The owner Richard Fusegni stated that the application had been reviewed by the Planning Board and by the Technical Advisory Committee and had addressed the drainage issue.

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

**DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variance for the petition as presented and advertised, and Mr. Moretti seconded the motion.*

Mr. Mulligan stated that the relief was for just Lot #3 and not the entire subdivision into three lots. He said granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because the essential characteristic of the neighborhood was a residential one and would not change if the relief was granted, permitting the one dwelling to have a bit of setback relief, nor would the health, safety and welfare of the public be impacted. Substantial justice would be done because the gain to the public would be balanced by strictly enforcing the Ordinance against the loss to the applicant by the fact that the property line on Mangroves Street was set back a sufficient number of feet from the edge of the pavement. Granting the variance would not diminish surrounding property values because what the applicant proposed was well within the side yard setback, and he also proposed a conservation easement area in the back. The



Planning Board had weighed in on the drainage issues, and a new home in that area would advance the value of surrounding properties. Literal enforcement of the Ordinance would result in unnecessary hardship because the corner lot and the lot's boundaries were offset from the edge of the pavement by a significant amount, so there would be no fair and substantial relationship between the purpose of the front yard setback and the property. The frontage on Mangroves and Kearsarge Streets would force the applicant to comply with front yard setbacks on both of those lots, causing a cramped building envelope. He felt the use was a reasonable one and met all the criteria.

Mr. Moretti said he concurred with Mr. Mulligan and added that the uniqueness of the corner lots and getting two front setbacks on the corner lot drove the variances.

*The motion passed unanimously, 7-0.*

8) Case #6-8

Petitioners: Sarnia Properties, Inc., owner, Q, LLC, applicant

Property: 4 Cutts Street #3 (933 Route One By-Pass)

Assessor Plan 142, Lot 37

Zoning District: Business

Description: Design and engineering of firearms, silencers and related accessories to the sporting and defense industries.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440 to allow a light industry use in a district where this use is not allowed.
2. A Variance from Section 10.1112.30 to allow 84 parking spaces where 103 parking spaces are required.

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

The applicant Jessica Gauvin and the Vice-President of Q, LLC Robbie Johnson were present to speak to the petition. Ms. Gauvin stated that the building was unique and was focused on research and development for designing and engineering firearms geared toward the military. She said it was technical and innovative and would be in accordance with State and Federal laws. She said she had letters of approval from the neighbors.

Chairman Rheume noted that there were nine employees and asked whether there would ever be more than nine vehicles added to the parking burden. Ms. Gauvin said there would not, except for meetings. Chairman Rheume asked whether Ms. Gauvin had considered industrial parks instead, and she said she had, but a big part of their business model was building it around the culture and people who worked with technology in downtown Portsmouth. She said most of the other spaces would need retrofitting.

Chairman Rheume asked what the concern to create the secure areas was. Ms. Gauvin said they were required by law to have the Federal firearms License and that they didn't want someone walking in and stealing something. She said there would be no testing on site, but there would be firearms.

Kevin O'Brien of Rye said he was an investor and retired from the military and felt that the applicant's products were key to national security.

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

Valerie Fagin of 75 Gate Street said she was with Moms Demand Action and referred to the recent mass shooting, saying she was opposed to the petition.

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

Ms. Gauvin stated that the other nearby businesses applied for variances, and she also distributed the abutters' letters of approvals to the Board.

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

### **DECISION OF THE BOARD**

Chairman Rheame read the definition of the term 'light industry' to the Board.

*Mr. Parrott moved to **grant** the variances for the petition as presented and advertised, and Vice-Chairman LeMay seconded the motion.*

Mr. Parrott stated that it was a straightforward application requesting approval to operate a design firm in the mixed area of a commercial and light industrial nature. It was a small number of people doing design work that would not affect anyone outside the building. He said it could be any business, based on computer work and stockpiling and assembling small parts. Mr. Parrott stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said that particular part of the City had long been developed for commercial and industrial use, and the business was simply another version of that kind of business. It had a small number of employees and wouldn't make a difference to anyone outside the building, and the nature of the work would not affect anyone outside the building as well because it would be quiet design work on computers, so it was simple to see that it wouldn't have an adverse effect on neighbors. Mr. Parrott said granting the variance would do substantial justice because he couldn't see any overriding public interest saying that the type of activity couldn't be done there, and he felt it would cause the new firm inconvenience and expense if they could not locate their business on that site. He said the tip and balance went to the business. Granting the variance would not diminish the value of surrounding properties because the corner industrial area was well developed and mature and would not change in character. Relating to the necessary hardship criteria, Mr. Parrott said the property was well suited to the business and the definition of light industrial was narrow enough that it required the variance because of the technicality of the wording of the Ordinance. There was much more parking than necessary for the use, so even if the number of employees increased substantially, there would still be plenty of parking. He said the application met all the criteria.

Vice-Chairman LeMay stated that the key was the impact and the type of work, which was engineering and small part fabrication. He said there would be no difference whether the company was making children's toys or bicycle parts. He said he concurred with Mr. Parrott and thought the variance should be approved.

Chairman Rheume said he wanted it made clear that the Board received an email in opposition, which they reviewed and considered.

Mr. Johnson said the motion should be supported and said that most of the work was design work but also consisted of assembly, packaging, and light industrial uses.

Chairman Rheume said the nature of the business could be polarizing and the Board's job was to recognize what the Ordinance allowed. He said it allowed this type of business, and it should be allowed in this industrial area.

*The motion passed by a vote of 7-0.*

---

9) Case #6-9

Petitioners: Clipper Traders, LLC, owner, Great Rhythm Brewing Company, applicant.

Property: 105 Bartlett Street

Assessor Plan 157, Lot 1

Zoning District: Office Research

Description: Brewery with tasting room and outdoor area.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Amend previously granted variance to allow a brewery use with an 800± s.f. tasting area and adjoining outdoor tasting area.

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

Mr. Mulligan and Mr. Moretti recused themselves from the petition.

The owner Scott Thoren stated that the design and layout changed and he needed additional relief to allow for expanded use of the tasting room. He said he also wanted to add an outside tasting area. He referred to his previous application's criteria review.

Mr. Johnson asked what the original square footage of the tasting room was. Mr. Thoren said it was 300 square feet. In response to further questions from Mr. Johnson, Mr. Thoren said an average day would be noon to 8:00, with a few days off during the work week, and that anything they did outside would be licensed.

Vice-Chairman LeMay asked about the tasting process. Mr. Thoren said there would be four taps, with a taste served in a 4-ounce glass and 3-4 beers available at a time. He said one individual would drink 15 ounces of beer. Mr. Lee asked about noise. Mr. Thoren said they would try not to be too loud or noisy.

Mr. Parrott said he didn't recall any mention of an outside place at the previous meeting when the Board approved the operation. Mr. Thoren said he hadn't thought about it at that time. Mr. Parrott said that type of operation typically involved noise of some kind, like music or television. Mr. Thoren said there would be no television or live music in the facility. Mr. Parrott asked how Mr. Thoren would control a few dozen people drinking samples. Mr. Thoren said the tasting room would be a family-oriented space that wouldn't encourage rowdiness or loud noise.

Mr. McDonell asked Mr. Thoren if he would be willing to have a limit on his hours. Mr. Thoren said he was concerned that restricting hours would restrict his revenue.

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

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

### **DECISION OF THE BOARD**

Chairman Rheume noted that the Board received a few emails from the concerned neighbors across North Mill Pond. Vice-Chairman LeMay said he could support the proposal if it had restrictions, such as no outside lighting, no music, and sunset closure. Mr. Johnson said the nature of the people using that type of place was a quicker turnover and not a party atmosphere, but he noted that it buffered on a residential neighborhood. Mr. Parrott said that type of proposal seemed inappropriate, considering that sound carried well over water and the homes across the pond were in a residential area. He said the owner could tell people to keep the noise down, but it wouldn't happen, and the general noise ordinance didn't go into effect until eleven o'clock. He said it was too much of a stretch. Mr. McDonell said he understood that it would be strange to have a bar in that location but felt that the applicant's point that it wasn't something in that nature was well taken. He suggested putting restrictions on hours. Mr. Johnson said it was an office research zone, so there was lots of ambiguity, but he also pointed out that there had been talk of invigorating the area with more activity.

Chairman Rheume said he was concerned about the tasting room the first time because it went from a fish processing plant to a brewery. He noted the request to expand the space to 800 square feet was more than double, and he felt that the outside area was too much, along with the fact that they were discussing restrictions on time and noises, which he felt were cascading issues by allowing the outside area. He said the outside tasting area was beyond what the Board originally envisioned.

*Mr. Parrott moved to **amend** the previous granted variance by approving the 800 s.f. inside tasting area and disapproving the proposed adjoining outdoor seating area. Mr. Johnson seconded the motion.*

Mr. Parrott stated that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the proposed outside area failed

both of those points and referred to his previous comments, noting that a small drinking establishment in that commercial and industrial zone struck him as an inappropriate addition. He said that granting the variance would do substantial justice because the neighbors had rights to peace and quiet, and sound traveled well over water. He said the owner could tell people to be quiet, but thought it was unreasonable to expect that would be the case all the time, and he felt that the public interest overrode the interest of the proponents to have the outside bar. He said the value of surrounding properties would be impacted by that type of outside activity as well as the properties across the water, which weren't that far away. He said the proposal failed on four out of the five criteria. Mr. Parrott also noted that the previous approval for 300 square feet was appropriate, and the requested 800 square feet was just an extension of that and would change only the size of it and not the nature, so he felt that it would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the modification of the inside area made sense and that expanding the internal tasting area wouldn't affect the surrounding properties and wouldn't be visible or within their hearing. As for hardship, he said that conditions became difficult to comply with as initially designed and sometimes plans had to be changed.

Mr. Johnson concurred with Mr. Parrott and said he didn't have a problem with the outside drinking area but thought the motion was the most reasonable compromise.

*The motion passed by a vote of 5-0.*

---

10) Case #6-10

Petitioner: Timothy R. Connolly

Property: 195 Hillside Drive

Assessor Plan 231, Lot 17

Zoning District: Single Residence B

Description: Addition over existing garage.

Requests: The Variances and/or Special Exceptions 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, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 7'± left side yard setback where 10' is required.

Mr. Moretti and Mr. Mulligan resumed their voting seats.

**SPEAKING IN FAVOR OF THE PETITION**

The owner Tim Connolly briefly reviewed his petition and the criteria. There were no questions from the Board.

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

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

### **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variances for the petition as presented and advertised, and Mr. Lee seconded the motion.*

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance and would not significantly alter the essential characteristics of the neighborhood because it would still be residential. He said the health, safety and welfare of the public would not be threatened. He said a side yard setback encroachment already existed. Granting the variance would do substantial justice because the loss to the applicant would outweigh any gain to the public if the Board required that the addition to the garage comply with the 10-ft setback when the existing one did not. The value of surrounding properties would not be negatively affected because it would be a nice improvement. As to the unnecessary hardship, special conditions were the existing nonconformity of the garage that already encroached on the side yard setback, and the existing setback violation had not shown that it disturbed light, air, emergency access and all the other reasons for setback requirements. He said it was simply vertically extending the existing setback and wouldn't be a problem, and the addition of the garage would be a reasonable use.

Mr. Lee said he concurred with Mr. Mulligan and noted that it looked like a quality project that would add to the value of the home and enhance the neighborhood.

*The motion **passed** by a vote of 7-0.*

---

11) Case #6-11

Petitioner: Jeremy N. Mard

Property: 21 Dearborn Street

Assessor Plan 140, Lot 5

Zoning District: General Residence A

Description: Install rear condenser.

- Requests: The Variances and/or Special Exceptions 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, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.521 to allow a 0'± right side yard setback where 10' is required.

Mr. Mulligan recused himself from the petition.

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

The owner Jeremy Mard said he wanted to install a silent condenser and had a letter of support from his neighbor. Mr. Mard said his house was on the lot line and that the

condenser would be 8 inches off the house, with the fan pointing toward his yard. He said he also wanted to add a fence on that side of the yard.

Vice-Chairman LeMay asked where the zero foot dimension was, and Mr. Mard said it was in line with the end of the house.

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

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

**DECISION OF THE BOARD**

*Vice-Chairman LeMay moved to **grant** the variances for the petition as presented and advertised, and Mr. Moretti seconded the motion.*

Vice-Chairman LeMay stated that granting the variance would not be contrary to public interest and would observe the spirit of the Ordinance because it would not change the essential characteristics of the neighborhood and not affect the health, safety and welfare of the public. Substantial justice would be done because it would benefit the applicant to add the condenser and there would be no benefit to the general public by denying it. Granting the variance would not diminish the value of surrounding properties, and the neighbor approved. Relating to the unnecessary hardship criteria, Vice-Chairman LeMay said the issue was not the condenser installation as much as it was the zero-foot setback, and the house was already on the property line, so it was an insignificant increase.

Mr. Moretti said he concurred with Vice-Chairman LeMay and had nothing to add.

*The motion **passed** by a vote of 7-0.*

---

**V. OTHER BUSINESS**

There was no other business.

---

**VI. ADJOURNMENT**

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 11:35 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary