

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

7:00 P.M.

**July 17, 2018
To Be Reconvened July 24, 2018**

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternates Phyllis Eldridge and Chase Hagaman

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume stated that John Formella was now a regular member, and he introduced the new alternate Chase Hagaman. He also noted that Mr. McDonell had a baby son.

I. APPROVAL OF MINUTES

A) June 19, 2018

ACTION OF THE BOARD:

*It was moved, seconded, and passed by unanimous vote to **approve** the June 19, 2018 minutes with minor amendments.*

B) June 26, 2018

ACTION OF THE BOARD:

*It was moved, seconded, and passed by unanimous vote (7-0) to **approve** the June 26, 2018 minutes as presented.*

II. OLD BUSINESS

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

A) Request for Extension regarding property located at 75 Congress Street.

ACTION OF THE BOARD:

*Mr. Parrott moved to **grant** the one-year request for extension.*

He stated that one-year extension was in accordance with the ordinance and that it was the Board's custom to grant a first request for extension. He noted that the project was a complex one that might require additional time.

*Mr. McDonell seconded the motion. The motion **passed** by unanimous vote (6-0).*

III. OLD BUSINESS – PUBLIC HEARINGS

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

A) Case 5-9

Petitioner: Michael De La Cruz
Property: 75 (63) Congress Street
Assessor Plan: Map 117, Lot 5
Zoning District: Character District 5 and the Downtown Overlay District
Description: Construct a basement indoor parking facility
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. Variances from Section 10.1114.20 to allow the following:
a) eight parking spaces with less than the required dimensions; and
b) a 12'± wide maneuvering aisle where 14' is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant to speak to the petition. He reviewed the history of the building. He said the Board had granted a previous approval for renovations but that parking hadn't been an issue at the time. He said they wanted to use a 12-ft alleyway on Fleet Street as an access to the underground garage, and he explained how the gate system would work. He said all the 25 parking spots would be allocated to the tenants. He reviewed the parking chart and pointed out which spaces were short of the required depth and would require a variance. He reviewed the criteria and said they would be met.

In response to Mr. McDonell's questions, Attorney Pelech said that one gate would be closed when the other gate was open. The applicant Michael De La Cruz rose to speak and said that the vehicles on Fleet Street would be given priority to enter the garage if there was a backup of vehicles trying to leave the garage. Mr. McDonell said he had trouble finding a hardship, especially given the relief that was granted earlier that year. Attorney Pelech that the variance for the parking sizes was necessary due to the problematic structure of the basement.

Chairman Rheaume said that he also didn't see the hardship. He remarked that the applicant had been before the Board three months prior and had stated that there was no need for parking, but

now he was back with a requirement for several parking spaces that didn't work out in terms of aisle turns and so on. He also noted that the building was large and should have plenty of parking available. He asked what was driving all the odd parking shapes.

Attorney Pelech said they hadn't known whether the garage would materialize because it had been rejected eight years before due to technical issues, which had recently been resolved. Mr. De La Cruz explained that his project was delayed for several years while it was going through the Legal and Planning Departments to get approval for eight units. He said the other hardship reason was that it took 18 months of time and money to figure out a way to make a loop in the garage, which the Planning Department had requested. He said his original engineering proposal was for a normal layout of 22-ft lanes and 19-ft spaces, but it didn't work, so they had to begin all over again. Chairman Rheume again asked what drove the need for 25 spaces. Attorney Pelech said they had 15 residences in the building, with no extra parking in close proximity. Chairman Rheume asked whether 20 spaces would work. Mr. De La Cruz said that parking convenience was what kept people interested in residential units.

Mr. Hagaman said he was still concerned about traffic backup on Fleet Street. Mr. De La Cruz said that one car would be allowed at a time to exit the garage and that a driver on Fleet Street had the priority to enter the garage. He said the car's signal to open the gate would supersede any signal from a car exiting the garage.

Brendan Tracker of Walker Consultants stated a peak hour of volume for 25 spaces would be 50%, so 8-12 spaces in an hour. He said a car would pass through every seven minutes or so. Mr. Hagaman said that the size and number of spaces indicated that every possible spot was being maximized, and he asked whether spots 8 through 10 could be made into one parallel spot. Mr. Tracker said the two building columns and turning movements would make it difficult.

Mr. Parrott asked whether the engineering team had signed off on the structural work. Mr. De La Cruz agreed.

Chairman Rheume opened the public hearing.

Wes Tator of 411 Middle Street said he was a commercial Realtor and that he thought Mr. De La Cruz was an extraordinary developer. He said he was in support of the application.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Tracker said he reviewed the parking plan and found that 22 of the 25 spaces could accommodate normal-sized vehicles, and the other three could accommodate compact vehicles. He said they verified that vehicles could easily angle in all the parking spaces.

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

DISCUSSION OF THE BOARD

Ms. Eldridge said she could see some hardship due to the building structure trying to meet modern criteria, but she thought there was no hardship if no parking was being demanded on the property. Mr. McDonell agreed, noting that the legal need for parking had been alleviated, but the applicant wanted to develop a mixed-use building and people who were residents expected one or two parking spaces each, which he thought was the hardship. He said the applicant was trying to shoehorn a certain amount of spaces, and the area's layout required relief. Mr. Lee noted that a building with parking was more valuable than a building without parking and that it would be a hardship for the applicant if he couldn't offer parking for residential use. Mr. Hagaman said he understood both perspectives but was nervous about the number of parking spots because there were only 15 residential units and there was a current trend of people using fewer vehicles, so he felt that trying to cram 25 spaces seemed unnecessary. He said he was still concerned about the Fleet Street traffic.

Chairman Rheume said he understood the desire to add parking as an amenity to attract tenants but found it concerning that the Board had previously given good arguments as to why no parking was necessary for the structure. He said they had approved what was requested at the time but was now asked to approve something quite different. He said the legalistic way of looking at it was not necessarily the right way. He noted that there were a lot of technical issues that had to go through TAC, who would have lots of concerns. He noted that one of the parking spots was past the gate and wondered whether the person could go out whenever he or she pleased. He noted that there was also a long distance between the two gates that could potentially have cars queuing up and causing internal circulation problems. He said it came down to whether there was a hardship, and he wasn't convinced that having a big building created a hardship. He said the Board previously granted the parking and said it was appropriate for that building. He said the fact that the building was an old structure with unique aspects could drive an odd set of circumstances, creating the need for these variances. He said he was willing to grant the ramp variance but asked whether the applicant really needed all 25 parking spaces or whether he could live without the two compact spots and some in the 3-point turn area.

Mr. McDonell agreed with Chairman Rheume. He said he was not concerned with the 12-ft width variance approval. He said an issue could arise from having the long distance between the two gates, which wouldn't change whether it was 12 feet or not. He said that something like that would need to be granted, based on what the Board had seen, but he didn't see enough of a hardship that required shoehorning 25 spaces in. He said if the Board didn't grant the additional request for eight parking spaces, it would still leave extra spaces that could get higher if things were redone a bit. He concluded that he was not concerned with the 12-ft width because he could see a hardship there, but he didn't see hardship with the rest of it.

DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the variance for the 12-ft plus or minus-wide maneuvering aisle (Variance B) and to deny the eight parking spaces with less than the required dimensions (Variance A). Mr. Hagaman seconded.*

Mr. McDonell said he would incorporate his earlier comments as well as the Board's comments. He said that granting Variance B would not be contrary to the public interest and would observe the spirit of the ordinance because he saw no conflict with the narrower maneuvering aisle being a threat to the public's health, safety or welfare. He noted that there could be a threat to the public's health for those who would occupy the spaces if they had smaller dimensions than required in the ordinance. He said substantial justice would be done because there would be a clear benefit to the applicant in being able to use the basement for a parking facility, but he didn't think the Board had any evidence that the applicant needed the number of spaces that he requested, so he didn't see the use of the garage in general being worth the cost. He said he saw no evidence that granting Variance B would diminish the value of surrounding properties, noting that the question was raised about whether the gate would cause problems, but the requested relief did not implicate the use of the gate or its function. Regarding the hardship, he said there were clearly special conditions to the property, including that it was a giant building with design issues and no available surface parking available, but he didn't see how the hardship extended to a certain number of spaces. He said he thought the Board could agree that it would be a hardship to the applicant not to give him any ability to have parking in the building, but it went too far to say that the applicant needed the number of spaces requested, so the Board didn't have to grant the dimensional parking relief requested. He said the proposed use had to be a reasonable one, and he thought the use was reasonable.

Mr. Hagaman said he concurred with Mr. McDonell and had nothing to add.

*The motion **passed** by a vote of 4-2, with Mr. Parrott and Mr. Lee voting in opposition.*

IV. NEW BUSINESS – PUBLIC HEARINGS

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

1) Case 7-1

Petitioner: LCSG LLC
Property: 160 and 168-170 Union Street
Assessor Plan: Map 135, Lots 29 and 30
Zoning District: General Residence C District
Description: Merge two lots into one with four dwelling units in three buildings.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.521 to allow the following:

- a) a lot area per dwelling unit of 2,363± s.f. where 3,500 s.f. is required;
- b) a right side yard of 5'± where 10' is required;
- c) a left side yard of 5'4" ± where 10' is required;
- d) a rear yard of 10'± where 20' is required; and
- e) a variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

SPEAKING IN FAVOR OF THE PETITION

The applicant Natasha Goyette was present to speak to the petition, along with her architect Mark Gianniny. She distributed letters of support from her neighbors to the Board. She reviewed the petition in detail and explained why her original plan was adjusted and how the setbacks were improved. She reviewed the criteria and said they would be met.

Mr. Hagaman asked whether the architect tried to get the 10-ft offset from the property line. Mr. Gianniny said they looked at several options but had a tight site. He reviewed the dimensions and said that the 5-ft setback was the maximum.

In response to Chairman Rheume's questions, Ms. Goyette said she was able to increase the back setback a little due to the barn being smaller. She said the porch that previously was missing on the side closest to 180 Union Street had been put back but wouldn't be changed in any way. She said they were adding dormers and some headroom to the duplex on the third-floor area for more functionality. Mr. Gianniny said they were making the space code-compliant by adding more headroom but that the floor levels wouldn't change.

In response to Mr. Hagaman's questions, Mr. Gianniny said they didn't consider pivoting the garage to make it parallel with the lot lines because it would take away from the driveway. He said there was only one apartment above the garage. Ms. Goyette added that the turn radius in the barn was also a determining factor.

Chairman Rheume opened the public hearing.

Rick Connor of 141 Madison Street said he approved the project because the new proposal had a 5-ft setback on the Austin Street side. He said the neighborhood needed the off-street parking.

SPEAKING IN OPPOSITION TO THE PETITION

Suzie Haverin of 88 Union Street asked where the hardship was. She said it wasn't in the neighborhood's best interest because the added rental units would mean more noise, traffic, trash, and rattling of air conditioners. She asked the Board to uphold the zoning.

Roland Cote of 188 Union said consistency was important and gave as an example the 2400 square feet where 3500 square feet were required, which he thought was a large exception. He asked the Board to consider whether they consistently made that type of exception.

Janet Morley of 188 Union Street said there were no special conditions that distinguished the property from others in the area, yet the applicant was requesting significant variance relief for four units that were too big, would cover too much lot space, and would block her sunlight.

Elyse Hambacher of 274 Austin Street said she was the direct abutter and felt that there was no hardship. She compared the property with a similar property a few houses down that had a single-family house and had sold with no problem. She asked the Board to uphold the right-side

setback of 10 feet, noting that her bathroom faced it. She also suggested removing some parking spaces or moving the dwelling a bit and lessening the footprint of Dwelling C.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Goyette said that the neighborhood felt that the additional parking spots could help the off-street parking situation. She said they had considered Ms. Hambacher's options but found that the neighborhood's support of off-street parking justified keeping the eight parking spots.

Chairman Rheume noted that there wasn't a rear or side view of Unit C's side, adjacent to 274 Union Street, and asked what the glass amount was on that side. Mr. Gianniny said the layouts were similar to the front elevation. He explained where the various rooms would be located and said the bedroom in the middle on the second floor needed light and egress. Mr. Gianniny said they were going for density and trying to improve the setbacks for the abutter on two of the lot lines. He said they were also pulling a building away from the street.

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

DISCUSSION OF THE BOARD

Chairman Rheume reviewed the history of the application, stating that the petition previously went before the Board three times and was denied for 10 units, then six units, and then four units. He said the Board granted a rehearing based on some procedural items from the prior meeting, which they had before them. He said the Board was hearing the petition anew and that it was similar to what was presented in March. He also noted that there were several letters for and against the project in the packet.

Mr. Hagaman said he struggled with the hardship, especially since the applicant was already moving two structures on the property. He said he was also torn about the size of the garage structure. He said the requirements for unnecessary hardship had to be unique to the property itself. Mr. McDonell said his view had not changed from the March meeting, when he had made the motion to approve the petition. He said the hardship had not changed. He said if the two lots were looked at separately, the lots looked identical. He said he felt that the hardship came from the existing duplex and felt that the two lots could be distinguished from others when looked at as a parcel. He said they could push Building C five feet to comply with the side setback, but they'd still have issues with the rear setback and the other side setback, and it would also remove some parking. He didn't see it shoehorning more than what was reasonable.

Mr. Parrott said he was disappointed to see that the view of Building C had been omitted. He said the Board had dealt many times with concerns of window placement when the buildings were close together. He said it was a new building, so the windows could be placed anywhere, and that information was not provided to the Board. He said he was surprised that the Board still didn't have the side view of Building C and the adjacent structure. He said they were dealing with very small lots that would never be approved as new construction nowadays, which made it more important that careful design consideration be given to that aspect and presented to the Board to be evaluated. He said the Board was only dealing with 9-1/2 thousand square feet,

which wasn't much space, and there were a lot of units going in, which made it a whole lot less per unit than what was allowed. Ms. Eldridge said she was on the edge because there were options that could have made the project need fewer variances by making a structure smaller or allowing one parking spot per unit. She said the new construction and fewer cars on the street would benefit Union Street, but she still had trouble seeing a specific hardship. Mr. Lee said it was a congested area and he liked the fact that the cars would be off the street.

Chairman Rheume said he didn't care for developers coming before the Board multiple times and decreasing the project scale to get approval, but he thought the project was more complicated than a developer just trying to maximize some things. He said he struggled with the application as well and noted that there were letters in support and in opposition. He said it wasn't an election or a popularity contest but that the Board was trying to understand it from a legalistic or technical standpoint. He said a lot had been made of the hardship criteria and said the applicant owned both lots, which gave them a different situation than other abutters and created the situation. He said the Board had to look at the totality of what was proposed and take into account the overall goals and what was being asked for relief. He reviewed the setbacks being asked for relief, noting that one was straightforward, one was 10 feet away but didn't butt up against an unbuildable portion of another lot, and one had a 5-ft setback that could be mitigated. He said what created the light and air issue was the abutting structure up against the property line. He said he was disappointed that the Board didn't have a better idea of the glazing on one of the units, due to the privacy issues between the two buildings. He said he could see making some kind of requirement on restricting the amount of glazing on Unit C. He said it came down to the total number of units on that property and the number of square footage per dwelling unit, which he discussed in more detail. He concluded that the fourth unit's requested relief was not excessive and thought there was enough for the application to be reasonable for a large parcel.

The glazing issue was brought up. The City Planner Mr. Cracknell approached the podium and said the building code stated that, within five feet of the property line, someone was limited to 15% of openings on the wall. It was further discussed. Ms. Eldridge said she was concerned about the increased noise and trash and said the property could have three units without needing a variance. Mr. Parrott said the percentage of glazing was just as important as the placement and noted that the Board still didn't have that. Mr. McDonell wondered whether the problem could solve itself in that the house was designed to be five feet from the neighbor and the neighbor had a house zero feet from the lot line with a bathroom window. He said they had to place their trust in the applicant to not place their bathroom there.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variances for the petition as presented and advertised, with no stipulations. Mr. McDonell seconded.*

Mr. Lee stated that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said it would not alter the essential characteristics of the neighborhood but would improve it by getting rid of the barn and putting in new structures. He said that no threat would be posed to the public's health, safety, and welfare. He said that granting the variances would do substantial justice and would not diminish the value of

surrounding properties. He said the special conditions that distinguished the property from others in the neighborhood were that it couldn't be used as it was without combining the lots and building new structures, so he thought the variance was necessary to make a reasonable use of it.

Mr. McDonell concurred with Mr. Lee. He said it was a big project and required relief for the setbacks and extensive lot use per area, but felt that it was a pretty minimal relief being requested. He said he didn't see any conflict with the purposes of the ordinance, nor how adding the additional unit and changing things around a bit would threaten the public's health, safety, and welfare. He said it was a benefit to the applicant and that he did see the harm to the public in the sense of the neighbor on the corner of Austin Street, but that the harm existed given the location of the current house next door and would exist no matter what work was done. He said that a structure 10 feet from the property line would cause a similar amount of harm, so that wasn't enough to outweigh the benefit to the applicant. He noted that the Board did not get testimony that values of surrounding properties would be diminished. He said the question of whether there was a hardship or not depended on the relief requested, and that when the two lots were taken as a whole, there were special conditions to the property. He said that keeping the duplex in the state it was in and developing the two lots to make the project beneficial to the neighborhood as well as provide additional parking were enough.

Mr. Parrott said he differed with respect to the hardship. He said that a substantial amount of teardown was required, which would leave a blank slate and potentially allow a lot of things to be done. He said he didn't think there was a hardship that demanded such a huge amount of variances or that the ordinance had to be bent so much to make a reasonable use of the property. He thought the proposal was better than the previous one and that the neighborhood would be better without the barn and the neglected house, but he said that wasn't really relevant. He said if the property was overbuilt, which he thought it would be, the neighborhood wouldn't be happy.

Chairman Rheume said he would support the project. He said that the public interest was supported, and he felt that reworking the combined properties and having the necessary parking helped with the nature of the units. He noted that the setback for the barn/garage unit improved the situation and the 5-ft setback triggered a reduced glazing requirement that would force the applicant to think carefully about window placement. He said it came down to the impact of the number of dwelling units per square foot and noted that there was already a duplex on the lots that somewhat contributed to it. He said there was a trend to allow a bit more density than in the past and thought that what was requested was reasonable because it reduced some of the problem areas. He said he thought the project made sense and met the criteria requirements.

*The motion **passed** by a vote of 5-1, with Mr. Parrott voting in opposition.*

Vice-Chair Johnson and Mr. Mulligan resumed their voting seats.

2) Case 7-2

Petitioner: Bromley Portsmouth LLC, RCQ Portsmouth LLC c/o Quincy & Co Inc.
Property: 1465 Woodbury Avenue
Assessor Plan: Map 216, Lot 3

Zoning District: Gateway 1
Description: Install wall signage
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.1251.20 to allow 246± s.f. of wall signs where 200 s.f. is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Max Sehada of The Sign Gallery was present on behalf of the applicant. He reviewed the petition, noting that the existing signage was the only one on the property and that the requested sign was seven feet tall and matched the height of others in the area. He noted that the Board had the written criteria review from him.

In response to questions from the Board, Mr. Sehada said the sign was the typical size for its kind and that the client would have to customize the sign if it had to be altered. Mr. Sehada also distributed some photos of comparable signs in the area to the Board. In response to further questions from the Board, Mr. Sehada said the size was the standard size for his client and that the letters would be illuminated internally.

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

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variance for a sign with 230.7 square feet where 200 square feet was the maximum. Vice-Chair Johnson seconded.*

Mr. Mulligan stated that granting the variance would not be contrary to the spirit of the ordinance and the essential characteristics of the neighborhood would not be altered, or would the public's health, safety, and welfare be affected. He said substantial justice would be done because the loss to the applicant if he was required to have a smaller sign would not be outweighed by any corresponding gain to the public. He said he saw no gain to the public in limiting the size of the sign, and that what was proposed was not an extremely significant increase in what was allowed. He said granting the variance would do no harm to surrounding properties. As far as the hardship criteria, he said the special conditions were that the property was offset from the main road, and the purpose of the signage was to direct motorists and the public toward the establishment, so the variance would achieve that goal. He noted that there was no marquee sign or other sign on the property, but there were other signs on other parts of the mall that had no deleterious effect on the neighborhood, so he didn't see any fair and substantial relationship between the purpose of the sign ordinance and its application to the property. He said it was a commercial sign in a commercial district and met the criteria.

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

*The motion **passed** by unanimous vote (7-0).*

3) Case 7-3

Petitioners: Byron D. And Sophie M. Matto
Property: 17 Fields Road
Assessor Plan: Map 170, Lot 8
Zoning District: Single Residence B District
Description: Add a second story and gable roof
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances from Section 10.521:
a) a front yard of 17'11" ± where 30' is required;
b) a right side yard of 3'11" ± where 10' is required; and
c) building coverage of 25.5%± where 20% is the maximum allowed; and
d) a variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

SPEAKING IN FAVOR OF THE PETITION

The applicant Byron Matto was present to speak to the petition. He said he submitted a slight alteration to the plan because they needed the extra bedroom. He reviewed the petition and said the criteria would be met.

In response to Mr. Matagan's question, Mr. Matto said the house would be 35 feet in height. The architect Joseph Matto said there were standard 8-ft ceilings on both floors, so they were at an overall height of 29 feet from the average grade.

Chairman Rheaume said he thought the project was a good-sized upward of the home, and he asked whether Mr. Matto had other examples from the neighborhood that were similar and indicated that the level of expansion would remain in the character of the neighborhood. Mr. Matto said his house was less in square footage than some of the new construction on Spinney Road, and he said that Baxter and Aldridge Streets had several two-story Colonials with 9-pitch roofs. The architect

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

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

DECISION OF THE BOARD

Chairman Rheaume said it was a current trend to build upward expansion. He noted that the Board had seen other applicants from that neighborhood that had smaller homes and had built additions over the years, but lately they were seeing more applications for upward expansions.

He said he drove through the neighborhood and saw some examples of original two-story homes as well as new development near Spinney Road. He felt that the neighborhood would continue to see that kind of pressure as small homes got purchased and people renovated in place. He said he felt that it was the most realistic option for most homeowners to expand on their current property, due to the tight real estate market. He said his only concern was the proximity and tight setbacks. He said it was a substantial upward expansion, so light and air could be an issue in the corner, but looking at the placement of the house on the property and the fact that the next house was a distance away, he said he could live with it.

*Vice-Chair Johnson moved to **grant** the variance for the application as presented and advertised, and Mr. Parrott seconded.*

Vice-Johnson said he agreed that the addition was substantial for a modest house in that neighborhood, but he thought it was pretty minimal for the variances requested. He said the siting of the property and the immediate abutter, especially the angle of the abutter, convinced him. He said that granting the variances would not be contrary to the public's interest and would observe the spirit of the ordinance because the tasteful design fit into the neighborhood and would not change the neighborhood's characteristics. He said there would be no threat posed to the public's health, safety, and welfare. He said granting the variances would do substantial justice and would pose no detriment to the public or abutters that would outweigh any detriment that the owner would suffer if he wasn't granted the variances. He said the values of surrounding properties would not be negatively impacted because the tasteful home was bound to increase property values at least slightly if not more. He said the hardships were that three sides of the property were normal shapes but the fourth had a significant angle to it, and the siting of the current house was up against that angle. He said it was a small setback and the property next to it seemed to put it at the back corner, so with the proximity of the house, the property line angle, and the general size of the property, the applicant would need additional variances anyway if he tried to respect the setbacks and propose added space in a different portion of the property.

Mr. Parrott concurred, noting that the trend was a good one because it was the most effective way to add a substantial amount of area to a house. He said the addition was a nice enhancement to the property that reflected well on the neighborhood and would have a minimal impact on the neighbors for the amount of floor space being added. He said the project satisfied all the criteria.

*The motion **passed** by unanimous vote (7-0).*

4) Case 7-4

Petitioner: McDonalds Corporation c/o The Napoli Group
Property: 1000 Lafayette Road
Assessor Plan: Map 253, Lot 12
Zoning District: Gateway 2 District
Description: Replace menu boards in the drive-through
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.1223.10 to allow animated signs where they are not allowed;

- and
- b) from Section 10.835.22 to allow illuminated menu boards or other signs associated with the drive-through facility that are not shielded from public streets and residential properties.

SPEAKING IN FAVOR OF THE PETITION

The developer Eric Dubroy was present on behalf of the applicant. He reviewed the petition and said they wanted to upgrade the McDonalds menu board to make it digital. He said they would add a second menu board about 20 feet before the upgraded board that would serve as a pre-order board. He reviewed the dimensions of the boards and said the criteria would be met.

In response to the Commission's questions, Mr. Dubroy said the front of the existing sign could be seen from the street, but the proposed sign could not be seen through the back. He said the sign would be the same angle. He said the primary sign would change three times a day and the pre-order board could go from 7-1/2 seconds to static, depending on the drive-through flow, and that the second sign would face inward and only its structure and not the face would be visible from Lafayette Street. He said the face of the main menu sign could not be adjusted to the point that it wouldn't be visible.

In response to Chairman Rheume's questions, Mr. Dubroy said the intent of the pre-order sign was to animate every 7-1/2 seconds as a start. He said customers would be able to see the pre-order sign as they rounded the corner, and if there were no other cars, the customer could go directly to the main sign.

Chairman Rheume also asked whether anything would be animated on the main menu board, like flashing or indicating to go to the next window. Mr. Dubroy said it did have that ability and that he had to request it from the Board. Chairman Rheume concluded that there were more complications to the main sign and the pre-order sign and wanted clarification of what the Board was approving. It was further discussed. Mr. Dubroy said the goal was to improve the drive-through service. He said the first sign could change every 7-1/2 seconds and would not be seen from the road, but that the second sign could be seen from the road and would change three times a day. He said the second sign would change when it indicated 'please drive up' for every customer.

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

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

DECISION OF THE BOARD

Chairman Rheume noted that the Board was very careful about animated signs. Vice-Chair Johnson said he had no problem with the project because the two signs were intended for the customers and he didn't think they would distract people driving by. Ms. Eldridge agreed, noting that it wouldn't have any effect outside of the drive-through window. Chairman Rheume

suggested a stipulation that the approval strictly apply to the menu boards and not to any other signage in or around the building.

*Mr. Parrott moved to **grant** the variance for the application as presented and advertised, with the following stipulation:*

- *That the approval apply strictly to the two menu board signs.*

Mr. Lee seconded the motion.

Mr. Parrott said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the project would not alter the essential characteristics of the neighborhood because the business was a long-established one and its surroundings had changed very little and that granting it would pose no threat to the public's health, safety, or welfare or otherwise injure public rights. He said substantial justice would be done because it would benefit the applicant and he saw no harm to the general public. He noted that the signs would not be visible to the majority of the traffic because Mirona Road had light traffic and motorists generally looked ahead to the traffic light. He said granting the variances would not diminish the value of surrounding properties because very little had changed in decades surrounding that property. He said the hardship was due to the fact that the property was on a corner lot, and the way it was situated prevented the eastbound traffic from being close to the restaurant. He said it was a wide lot, with the restaurant in the middle, and the road was wide, so the sight lines were such that even if the menu boards were animated a little bit, they would not be a distracting factor.

Mr. Lee concurred with Mr. Parrott and had nothing to add.

*The motion **passed** by unanimous vote (7-0).*

*It was moved, seconded, and passed unanimously to **suspend** the rule for ending the meeting at 10:00 so that the last petition could be heard.*

Mr. Mulligan recused himself from the petition.

5) Case 7-5

Petitioner: Patricia A. Wallace Revocable Trust, Patricia A. Wallace, Trustee
Property: 50 Sunset Road
Assessor Plan: Map 153, Lot 13
Zoning District: Single Residence B District Description: Install an 8'± x 8'± shed
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.573.10 to allow a shed with a 0'± right side yard where 5' is required.

SPEAKING IN FAVOR OF THE PETITION

The applicant Patricia Wallis was present to speak to the petition. She distributed a layout to the Board and said her neighbor approved the project. She said she needed the shed to store her snow blower. She reviewed the criteria and said they would be met.

In response to the Commission's questions, Ms. Wallis said she was okay with the shed being 14 inches from the property line. She said she wanted the 8'x8' shed rather than a smaller one because she felt it wasn't worth the expense to do anything smaller. She said she could also store the lawnmower and put some shelving up.

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

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

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variance as presented and advertised, and Mr. Parrott seconded.*

Mr. Lee said that granting the variance would not alter the essential characteristics of the neighborhood because it would be just one more shed in the neighborhood. He said it would pose no threat to the public's health, safety, or welfare. He said substantial justice would be done because the applicant would have an accessible place to put her snow blower. He said granting the variance would not diminish the value of surrounding properties. He said the special condition was the driveway's slope that prevented her from putting the shed anywhere else.

Mr. Parrott concurred with Mr. Lee and had nothing to add.

Chairman Rheaume agreed that the hardship seemed to be the slope of the driveway and how the garden was positioned. He noted that the Board usually tried to avoid a zero-foot setback but felt that it made sense in that case and that the shed could be moved if it needed maintenance.

*The motion **passed** by unanimous vote (7-0).*

IV. ADJOURNMENT

*At 10:34 it was moved, seconded, and passed by unanimous vote to **adjourn** the meeting.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary