

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

7:00 P.M.

FEBRUARY 19, 2020

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

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) January 22, 2020

*It was moved, seconded, and passed unanimously to **approve** the January 22, 2020 minutes with one change.*

II. PUBLIC HEARINGS – NEW BUSINESS

Ms. Eldridge recused herself from the petition.

1) Case 2-1. Petition of Sandra C. O’Neil for property located at **106 Kane Street** wherein relief was needed from the Zoning Ordinance to demolish an existing portico and construct a 4’ x 8’ portico which requires the following: 1) An after-the-fact Variance from Section 10.521 to allow a 1’ front yard where 15 feet is required; and 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Plan 142 Lot 13 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

The project contractor Phil Merrill was present on behalf of the applicant. He reviewed the petition and said the rotted portico would be replaced with a timber one.

Minutes approved 4/7/2020

Mr. Hagaman asked why there was no building permit pulled before the project was begun. Mr. Merrill said that he hadn't thought a small portico would need a permit, but that he stopped the construction as soon as he learned that a permit was needed.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Lee said granting the variances would not be contrary to the public interest or the spirit of the ordinance; substantial justice would be done; the value of surrounding properties would not be diminished; and literal enforcement of the ordinance would result in unnecessary hardship because the property couldn't be used in strict conformance with the ordinance due to its location.

Mr. Mulligan concurred and said the unique aspect of the property was the challenging shape of the lot and the placement of the existing main structure up close to the lot line that drove the relief. He said it was almost a replacement in kind, with a slightly different footprint but less nonconforming than what existed. He noted that a lot of effort and resources were being put into the project. He said there was no fair and substantial relationship between the front setback requirement and its application to the property and that surrounding properties would not be negatively affected. For those reasons, he said the petition should be approved.

*The motion **passed** by unanimous vote, 7-0.*

Chairman Rheume recused himself from the petition, and Vice-Chair Johnson assumed the position of Acting-Chair. Ms. Eldridge and Mr. Hagaman took voting seats.

2) Case 2-2. Petition of Matthew Carl Beal and Heidi Leigh Medlyn for property located at **242 Leslie Drive** wherein relief was needed from the Zoning Ordinance to demolish an existing garage in order to construct an 829 square foot addition, with garage on the basement level, which requires the following: 1) A Variance from Section 10.521 to allow 30% building coverage where 20% is the maximum allowed and 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Plan 209 Lot 52 and lies within the Single Residence B District.

SPEAKING IN FAVOR OF THE PETITION

Carl Beal representing the applicant was present to speak to the petition. He said the project was necessary to provide more living area and to modernize the spaces to current standards. He reviewed the petition and criteria, noting that the addition would increase the lot coverage to 28 percent but that other homes in the neighborhood had similar additions.

In response to Mr. Hagaman's questions, the applicant said he requested the extra one-and-one-half percent because he thought it would be better. He said he didn't think there could be a potential for errors in measurements because the presented drawings were his sketches of what could be done, and that he would hire an architect.

Mr. McDonell said it looked like all the lots in the area were very small and similar to the applicant's lot, and he asked what was different about the applicant's lot that would constitute a special condition. Mr. Beal said most of the lots had newly-constructed additions in the rear and side yards. Acting-Chair Johnson said there was a fair amount of cut coming out of the driveway to make it work, and he asked what the effect would be on the current cross wall and potential scenarios. Mr. Beal said the proposed garage elevation was at the elevation of the existing basement and that there may be some challenges with the cross wall. Acting-Chair Johnson said he was more concerned with the general proposed project because the if the driveway was brought down to the top of the footing, it wouldn't serve as a cross wall. Mr. Beal said there could be challenges but that their excavations had not uncovered any ledge.

Mr. Hagaman asked whether other proposals might have a smaller footprint. Mr. Beal said they were trying to keep the footprint the same, but the garage was in rough shape and they thought it would be a good idea to put the garage in the basement and have living space at the top.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the variances for the application as presented, and Ms. Eldridge seconded.*

Mr. McDonell said the fact that the project didn't require setback relief was surprising, given the size of the lot, but what drove the variance request was the very small size of the lot. He said the addition would add substantially to what was there but would wind up being a reasonably sized home that would be in keeping with the neighborhood. He said granting the variances would not be contrary to the public interest, would observe the spirit of the ordinance, and would pose no threat to the public's health, safety, and welfare. He said there were concerns with the way the addition was planned to be constructed, but he saw no issues with meeting the criteria. He said substantial justice would be done because there would be no harm to the general public and the finished project would be a clear benefit to the applicant. He said granting the variances would not diminish the value of surrounding properties because the tasteful addition would be in keeping with the neighborhood. He said literal enforcement of the ordinance would result in

unnecessary hardship because the Board had to find special conditions of the property that distinguished it from others in the area, and several lots in the neighborhood were similarly situated. He said one thing that distinguished the property was its location directly behind the museum, which added to the open space and made it less likely that the increased building coverage would be noticeable to anyone. He also noted that the applicant's property was similar to the lot on the left of it. He said there was no relationship between the purpose of the ordinance provisions and their application to the property and that the variances should be granted. Ms. Eldridge concurred and had nothing to add.

*The motion **passed** by unanimous vote, 7-0.*

Chairman Rheume resumed his seat, Vice-Chair Johnson resumed his seat, Mr. Hagaman returned to alternate status, and Ms. Eldridge assumed a voting seat.

3) Case 2-3. Petition of KSC, LLC for property located at **2222 Lafayette Road** wherein relief was needed from the Zoning Ordinance for a change of use to allow a religious place of assembly, which requires the following: A Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly where the use is permitted by Special Exception. Said property is shown on Assessor Plan 267 Lot 2 and lies within the Gateway Neighborhood Mixed Use Corridor (G1).

SPEAKING IN FAVOR OF THE PETITION

Attorney Kevin Baum was present on behalf of the applicant. He said the goal was to move the Salvation Army's operations to a better location that had more parking and was located near two bus stops. He said the activities would remain the same and would bring a maximum of 40 patrons and no more than 12 vehicles because most patrons used the bus service or the Salvation Army vans. He said there would only be interior changes, with some additional landscaping and a sign change. He reviewed the criteria and said they would be met.

Mr. Hagaman asked where the bus stops were located in proximity to the building, noting that the area didn't have any sidewalks and that it could be a safety hazard. Attorney Baum said there were bus stops on the same side of the road as the building and that the Salvation Army's two vans would also transport patrons.

Chairman Rheume opened the public hearing.

Architect Lisa DeStefano said she had worked with the Salvation Army to vet several locations and thought the Lafayette Road location was the best one because it already had a commercial kitchen and plenty of egress and parking.

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. Parrott moved to **grant** the Special Exception as presented, and Vice-Chair Johnson seconded.*

Mr. Parrott noted that there weren't any sidewalks but that people walked on the edges of the roads, which wouldn't change. He said the site had a long history of numerous uses, including restaurants, retail stores, and office space, and that many things had come and gone over the years. He said both sides of the road near the site had commercial uses, and he thought it would be a very good location for the Salvation Army because it would be accessible, especially with a bus stop close by. He said the use was allowed by special exception and would pose no hazard to the public on account of potential fire, explosion, and so on because there was no industrial operation involved except for a commercial-grade kitchen. He said it would not pose any detriment to property values in the vicinity because the use was a benign one and would fit in nicely with the other odd uses in the area. He said there would be no detrimental effects from parking, odors, noise, dust, gas, or anything associated with heavy industry. He said there would be no creation of traffic safety hazards, except the only difficulty would be taking a left out of the parking lot onto oncoming traffic. He said granting the special exception would pose no excessive demand on municipal services like water, sewer, fire, and so on and would pose no significant increase of storm water runoff because the property would not be changed in the exterior. He said the project met all the criteria and should be approved.

Vice-Chair Johnson concurred with Mr. Parrott, adding that it was a fantastic location for the Salvation Army and would help them focus their resources on their global aims. He said the use would be a different one than the past use but that he saw no significant increase in hazards on any of the fronts and thought it was a great application.

*The motion **passed** by unanimous vote, 7-0.*

Mr. Hagaman assumed a voting seat and Ms. Eldridge returned to alternate status.

4) Case 2-4. Petition of Lani Fortier & Justin Pendarvis for property located at **152 Orchard Street** wherein relief was needed from the Zoning Ordinance to demolish an existing front porch in order to construct new living space, demolish and reconfigure main roof and construct a new rear deck which requires the following: 1) a) a Variance from Section 10.521 to allow a 2' right side yard where 10' is required and b) to allow a 5'6" right side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Plan 149 Lot 39 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

The applicants Lani Fortier and Justin Pendarvis reviewed the petition and criteria and said they would be met. In response to Vice-Chair Johnson's questions, Mr. Pendarvis said the porch would be infilled space and the intent was to have a full foundation.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the application as presented, and Mr. Hagaman seconded.*

Mr. Mulligan said that what existed was functionally acceptable but not optimal, and what was proposed would do a lot to enhance the property, especially by converting the porch into real living space and opening up the other part of the porch with a clever design. He said granting the variances would not be contrary to the public interest, would observe the spirit of the ordinance, would not change the essential character of the neighborhood, and would pose no threat to the public's health, safety, and welfare. He said substantial justice would be done because if the applicant were required to comply with the setback requirements, he couldn't do anything with the property due to its odd shape and the existing dwelling's configuration, and the loss to the applicant would far outweigh any gain to the public. He said granting the variances would enhance the value of surrounding properties. He said the special conditions of the property were its trapezoidal setup and the home situated straight to the street, which caused the encroachment on the right side, and that the proposal to extend the existing side wall out a few feet would result in only a foot of nonconformity. He said those conditions distinguished it from others in the area, and that it was also the smallest lot on the block. He said there was no fair and substantial relationship between the purpose of the ordinance provisions and their application to the property and that the application should be approved.

Mr. Hagaman concurred with Mr. Mulligan and said he liked the design of the house.

*The motion **passed** by unanimous vote, 7-0.*

Vice-Chair Johnson recused himself from the petition, and alternates Mr. Hagaman and Ms. Eldridge assumed voting seats.

5) Case 2-5. Petition of Gary G. & Sheri T. Nadeau for property located at **138 Rockland Street** wherein relief was needed from the Zoning Ordinance to demolish an existing garage and construct a new 22' x 24' garage which requires the following: 1) Variances from Section 10.521 to allow a 3' left side yard where 10' is required; b) a 6' rear yard where 16'6" is required for an accessory structure; and c) 28% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended,

reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Plan 113 Lot 14 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

The applicant Gary Nadeau was present and reviewed the petition, noting that the 1940s house was substandard. He reviewed the criteria and said they would be met. He noted that there would be only storage above the garage for bicycles, winter items, and so on.

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 variances for the application as presented, and Mr. Parrott seconded.*

Mr. Mulligan said the design was very tasteful. He said the major relief was to increase the building coverage, which wasn't a huge increase, and that the setback violations were generally the same as those that existed. He said it was a fairly significant garage but felt that the amount of relief wasn't a whole lot and that it met all the criteria. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance and that the essential character of the neighborhood would not be negatively affected, nor would the public's health, safety, and welfare. He said substantial justice would be done, noting that the loss to the applicant would outweigh any benefit to the public because the project would mirror the existing setback violations and slightly increase the nonconforming building coverage. He said the property was across the street from a municipal facility with a ball field and so on, and the area wasn't an overly crowded part of town. He said granting the variances would not diminish the values of surrounding properties because it would be a substantial upgrade to the property. Regarding literal enforcement of the ordinance resulting in unnecessary hardship, he said the special conditions of the property were its location near the large municipal facility and the current built environment, which forced the garage to be moved outside the setbacks. He said there was no fair and substantial relationship between the purpose of those provisions and their application to the property. He said the proposal met all the criteria and should be approved.

Mr. Parrott concurred with Mr. Mulligan, noting that the small addition in the building area was in one direction toward the house and the other direction toward the middle of the yard, so there would be no adverse effect on the neighbors. He said the upgrade of the building would be an enhancement to the property as well as to the whole neighborhood.

*The motion **passed** by unanimous vote, 7-0.*

Mr. Parrott recused himself from the petition, and Mr. Hagaman and Ms. Eldridge assumed voting seats.

6) Case 2-6 Petition of John J. Roese Revocable Trust, John Joseph Roese, Trustee for property located at **14 Mechanic Street** wherein relief was needed from the Zoning Ordinance to deconstruct the existing house and reconstruct original part in a new location with a new addition which requires the following: 1) A Variance from Section 10.521 to allow a 5’ side yard where 10’ is required, and 2) 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. Said property is shown on Assessor Plan 103 Lot 10 and lies within the General Residence B District.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He introduced the applicants, the architect Lisa DeStefano, the landscape architect Robbie Woodburn, and the designer Brendan Cobal. He referred to two letters in support of the project. He reviewed the petition in great detail, noting in particular the effect that the 25-ft cemetery setback had on the project. He also pointed out that the deck was shortened at the request of the abutter for privacy reasons. He reviewed the criteria and said they would be met.

Mr. Hagaman asked whether there were any preliminary discussions about the design and location of the house that might have preserved abutter views. Attorney Phoenix said the project team did speak to the abutters but that there wasn’t really any other place to put the house. He said there was some vegetation and a privacy fence at ground level that blocked views from the backyard to Prescott Park, but that they opened up the views toward the cemetery and water. Ms. DeStefano said one of the reasons for the projecting fin wall that went down along the deck was because the Historic District Commission (HDC) had liked the fact that the deck was recessed into the building instead of projecting out.

Mr. McDonell asked which trees on the property would be removed. Ms. Woodburn said the four maple trees on Mechanic Street as well as the two middle trees would be removed, and the one in the back would be removed because it was on the existing foundation. She said two trees would remain. Chairman Rheaume asked what the interior would look like since there were no floor plans provided. Ms. DeStefano said the addition had the connector to the main entry, which had to be made lower in height and smaller in mass, and that the barn structure would have the kitchen and breakfast area, with the master bedroom on the second floor. Chairman Rheaume said the new construction violated the footprint and that the Board liked to have new construction fully respect their setback requirements. Ms. DeStefano said they were restoring the main building back to its previous openness, so the new systems would go into the addition.

Mr. Hagaman asked why the applicant hadn’t pulled the addition forward so that it was beyond the ten feet required for the offset. Ms. DeStefano said they had it aligned with the face of the existing building, but the roof and eave lines were different, so the HDC requested that the

addition be set back. She said the connector and the barn were also set back to allow the main historic structure be more prominent.

Chairman Rheume opened the public hearing.

Francesca Marconi of 177 Mechanic Street said she loved the project and thought it was wonderful that the house would be fixed up and would keep its historic integrity.

SPEAKING IN OPPOSITION TO THE PETITION

No one rose to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Susan Mennel of 187 Marcy Street said she was an abutter and wondered if the new structures would extend far enough to obscure her best views.

Attorney Phoenix said the views would open up more than they currently did except for the easterly one. He said he empathized with Ms. Mell but there was no way that anything could be built where the existing house was. He said the requested variance was within the height of the structure and didn't affect the view, and that they tried to address Ms. Mennel's privacy concerns by making the deck a lot smaller.

Ms. DeStefano said the existing house and the shed on the side could not be restored at their locations because the foundation was crumbling and the house really belonged on the street, like most of the houses in urban planning. She said the house would be less nonconforming than it currently was and would be a safe and code-compliant structure.

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

DISCUSSION OF THE BOARD

Mr. McDonell said the existing structure would be renovated and added onto, but that the applicant couldn't do that in the structure's existing location due to the lot burdened by the cemetery buffer and so on. He said the lot was ell-shaped and the back part of it was almost entirely burdened by the cemetery buffer that prohibited excavation. He felt that the new location was reasonable, as were the new construction and renovation. He said the applicant could technically fit the new construction in the required setbacks without asking for relief but had reasonable reasons for their variance requests. He said the construction would take away some of the views in some directions but would also add to views in other directions. He said the views of the neighbors were not hugely relevant to the Board, but he didn't see the project diminishing the values of neighboring properties. He said it was a reasonable proposal and met all the criteria. Vice-Chair Johnson said it esthetically seemed more appropriate to have the house sited close to the street front because every house in the neighborhood was situated in that way. He said the request was somewhat of a minimal dimensional relief and that it was complicated to

create an addition to a historic home and appease the HDC yet still meet as many zoning requirements as possible. He said the fact that the design was backed up by the HDC gave him less concern than something they might not have been in favor of.

Mr. Hagaman said he agreed with all the remarks and that he was empathetic to the loss of certain views, but he felt that if it were a house that fell down and had to be rebuilt, it would likely be rebuilt in the same position and in a very similar fashion and something could be put there that didn't need relief. He said what was driving the relief was a request from the HDC to protect the historic nature of the property itself. He said it was a modest and reasonable proposal and that the variance requests fell in line with the spirit of the ordinance. Chairman Rheaume said he also agreed with several of the remarks, especially the fact that the house was an outlier in the neighborhood because it was set so far back from the road and had the additional hardship of abutting up against the cemetery. He said those aspects were part of what drove the design, as well as the HDC's considerations to try to make the addition less prominent than the historic house. He said he also understood the architect's reasoning for the addition's size that included a modern kitchen space that wasn't suited to an older home and the fact that the addition had to be pushed back to give the original home prominence.

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **grant** the variances for the application as presented, and Mr. McDonell seconded.*

Vice-Chair Johnson referenced his and the Board's previous comments. He said it was a good solution to a complicated problem and was a tasteful way to relocate the building and add modern amenities and a modern addition that didn't overpower the existing building. He noted that the addition would be stepped back from the original building, and the lower ridgeline and lower recessed structures would make the addition significantly subservient to the existing building while still having its own prominence and nice design to it. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the requested setback relief would not affect air, light, security, and so on. He said it was on a secondary street that wasn't heavily travelled, and the park would add to the perception of additional open space. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public. He said he sympathized with the people whose views would be affected but thought the applicant's benefit was not outweighed by that. He said granting the variances would not diminish the values of surrounding properties because the project would be a tasteful upgrade and restoration to the existing building and provide a nice, modest addition that would help continue to increase the values of surrounding properties. He said there were multiple factors to the property that created a hardship, including the corner lot with an unusual shape, the significant setback, and the building's location and proximity to a cemetery, which had no waiver process. He said those special conditions of the property made for a valid enough reason to request the setback. He said the proposed use was a reasonable one and should be approved.

Mr. McDonell concurred with Vice-Chair Johnson and had nothing to add.

Mr. Lee said the proposed project would present a variety of insults to the neighbor behind it, including totally blocking the view of Prescott Park in the front and sides, having the air conditioning units in the back, and having a second-story deck overlooking the abutter's home. He said he could not get behind the motion to approve.

The motion passed by a vote of 6-1, with Mr. Lee voting in opposition.

Mr. Parrott resumed his voting seat. Ms. Eldridge retained her voting seat and Mr. Hagaman returned to alternate status.

7) Case 2-7. Petition of Daniel Wyand & Lena Chamberland for property located at **65 Pinehurst Road** wherein relief was needed from the Zoning Ordinance for the addition of a dormer and HVAC unit on a previously approved garage which requires the following: 1) 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. 2) A Variance from Section 10.515.14 to allow a 6' setback where 10' is required for a mechanical system. Said property is shown on Assessor Plan 221 Lot 72 and lies within the General Residence A District.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. He introduced the applicant Dan Wyand and reviewed the petition. He said the request for the dormer was to allow more headroom for a rumpus room and to be more esthetically pleasing. He said the upper floor would not be an Accessory Dwelling Unit (ADU), and he noted that a variance for the other dormer was previously granted by the Board. He reviewed the criteria and said they would be met.

Mr. Hagaman asked why a second dormer was needed for a rumpus room since there seemed to be adequate space already, and why the vents couldn't be on the other side of the building so that they would not require a variance. Attorney Phoenix said the driver for the other dormer was to balance the house's esthetics. The owner Mr. Wyand said the lot was ell-shaped and that a variance would still be required if the vents were placed on the other side because it would be in the rear setback. Mr. McDonell asked about landscaping screening. Mr. Wyand said there were very tall pine trees that screened the property and that the additional dormer would face a tree branch. Mr. Parrott asked whether utilities would be added. Mr. Wyand said there were electric, heating, and cooling, but no plumbing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the variances for the application as presented, and Vice-Chair Johnson seconded.*

Mr. McDonell said the additional dormer and HVAC unit would make the space something other than storage or a rumpus room, but that the request was reasonable and complied with all the criteria. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance, would not alter the essential character of the neighborhood, and would pose no threat to the public's health, safety, and welfare. He said the garage would be nestled in the corner of the lot and screened from anyone who might have concerns with its location. He said substantial justice would be done because there would some additional benefit to the applicant by balancing the look of the structure and matching the look of the home. He said granting the variances would not diminish the value of surrounding properties because the project wasn't changing what was already approved. He said the hardship was a harder case to make than the previously-granted variance if one just looked at what was requested, but that it made sense to look at it as a whole. He said the garage had to be located where proposed so that it wouldn't take up the entire backyard, which was a special condition that distinguished it from others in the area. He said he saw no relationship between the general purpose of the ordinance and the rear yard setback and its application to the property. He said the proposed use was a reasonable one and should be granted.

Vice-Chair Johnson concurred, adding that the HVAC's decibels were quite reasonable.

*The motion **passed** by unanimous vote, 7-0.*

Mr. Mulligan recused himself from the petition and left the meeting. Ms. Eldridge retained her voting seat and Mr. Hagaman assumed a voting seat.

8) Case 2-8. Petition of 132 Middle Street LLC and 134 Middle Street LLC for property located at **132 Middle Street and 134 Middle Street** wherein relief was needed from the Zoning Ordinance for the renovation and reconfiguration of existing units including the conversion of one unit from office to residential which will result in 21 dwelling units between the two properties and requires the following: 1) A Variance from Sections 10.331 & 10.333 to allow a nonconforming use to be extended, enlarged or changed without conforming to the requirements of the Ordinance and to allow the use to be extended throughout other parts of the building or structure. 2) A Variance from Section 10.5A41.10A to allow a lot area per dwelling unit of 590 square feet where 3,000 square feet per dwelling unit is required (134 Middle Street). 3) A Variance from Section 10.5A41.10A to allow a lot area per dwelling unit of 499 square feet where 3,000 square feet is required per dwelling unit (132 Middle Street) Said properties are shown on Assessor Plan 127, Lot 12 and Assessor Plan 127, Lot 11 and lie within Character District 4-L1 (CD4-L1).

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin was present on behalf of the applicant and introduced the project builder Bob McDonald. Attorney Loughlin reviewed the mansion's history and the improvements that would be needed to restore it. He referred to Attorney Durbin's letter that addressed the criteria.

In response to the Board's questions, Mr. McDonald said he wasn't sure what the total living space presently was but that the office space was around 700 square feet. He said the media room for the basement was a common space that would be used by the tenants to host events. He said there would probably be a roof deck if the budget allowed it.

Chairman Rheume asked the applicant if he knew when the historic home went from a duplex mansion to all those units. Attorney Loughlin said he only knew that there was a home on the property during World War 1. In response to further questions, Mr. McDonald said the two separate properties would be maintained and easements would be provided for egress. He said the applicant would go before the Planning Board for a Conditional Use Permit (CUP). He said the current parking was on the sides of each property, with no defined spots, and that a fence broke up the 134 Middle Street side, which allowed people to come in from the street. He said there was an easement for the back of the property, which had eight parking spots and would have seven new parking spots. Attorney Loughlin said there was a shortfall of one parking space. He said a traffic study was done and a parking estimate was submitted to the Planning Board. He also said the home was listed on the City's tax card as a multi-family one.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. McDonnell said the proposal was a reasonable one and that the lot-area-per-dwelling-unit was changing a bit on one of the two lots by removing the office space, but that ultimately the proposal made more sense to grant than if it was a brand new building. Chairman Rheume agreed, noting that if it were a brand new building and duplex mansion and the proposal was to create that many units, the Board would be reluctant, but the fact that it had a long history of being subdivided into about the same number of units made sense. He said the units were tiny and modest and targeted toward single people or couples. He noted that the parking was a bit of a concern but that the Planning Department would deal with the CUP. He also pointed out that there was a capability of additional parking and that people could use the City's parking garage. He said the HDC wanted to see the mansion returned to its original stateliness, and that all the work that needed to be done merited some consideration and made it a reasonable request.

DECISION OF THE BOARD

*Mr. McDonnell moved to **grant** the variances for the application as presented, and Mr. Lee seconded.*

Mr. McDonnell said granting the variances would not be contrary to the public interest or to the spirit of the ordinance. He said what was proposed, with the exception of converting one office space, would not alter the essential character of the neighborhood because the residential units would remain the same. He said it was a perfect example of a case where it would be objectively negative on the Board's part to try to get the lot-area-per-dwelling-unit increased because there was a real need for affordable housing than the kind of housing that was more profitable for new construction. He said it was a good thing to get a large building renovated yet keep units of similar modest size, and he thought if the Board pushed back on the lot-area-per-dwelling-unit request, it would be objectively a bad thing. He said substantial justice would be done because the benefit to the applicant in renovating the structure would outweigh any harm to the public. He said it was a reasonable request, given what presently existed. He said granting the variances would not diminish the value of surrounding properties because the proposal was essentially what already existed but was more up to code and date. He said the special conditions of the property that distinguished it from others was that, for some period of time, the original mansion duplex was broken up into a bunch of small dwelling units, and he didn't think there was any real relationship between the purposes of the lot-area-per-dwelling-unit requirement and its application to the property. He said the proposed use was a reasonable one and could continue the existing reasonable use, and that the request should be granted.

Mr. Lee concurred with Mr. McDonnell, adding that it was a huge benefit to the community to take an obsolete building and renovate it to code-compliant and relatively modest housing.

*The motion **passed** by unanimous vote, 7-0.*

III. OTHER BUSINESS

Chairman Rheume stated that Mary Koepenick, the Administrative Clerk for the BOA, was retiring and that she would be greatly missed. He said Ms. Koepenick made great contributions to the Board and went above and beyond what her role encompassed. All the Board members agreed and wished her well.

IV. ADJOURNMENT

*It was moved, seconded, and passed unanimously to **adjourn** the meeting at 10:18 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary