

**BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
Remote Meeting via Zoom Conference Call**

7:00 P.M.

FEBRUARY 16, 2021

MINUTES

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Peter McDonell, Jim Lee, David MacDonald, Christopher Mulligan, John Formella, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS ABSENT: None

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of January 19 and 26, 2021.

*The January 19 and January 26, 2021 meeting minutes were **approved** as presented by unanimous vote, 7-0.*

Chairman Rheaume stated that Item E was withdrawn by the applicant. He said Petitions C and G were requested to be postponed by the applicants.

*It was moved, seconded, and **passed** by unanimous vote (7-0) to take Item C, 80 Fields Road, and Item G, 668 Middle Street, out of order.*

Note: The Board addressed Items C and G and then heard the other petitions in order.

II. OLD BUSINESS

A) Petition of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue** whereas relief was needed from the Zoning Ordinance to convert an existing garage into a Detached Accessory Dwelling Unit which requires the following: 1) A Variance from Section 10.521 to allow 0 feet of street frontage where 100 feet is required. Said property is shown on Assessor Map 229 Lot 4 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, and the applicant Mr. Butch Ricci was also present. Attorney Phoenix reviewed the history of the lot and why the Detached

Accessory Dwelling Unit (DADU) met the current zoning requirements. He said the neighbor's concerns about an easement and sewer rerouting were resolved. He reviewed the criteria in full.

Mr. MacDonald asked about the DADU use. Chairman Rheume explained that the State passed a new law associated with DADUs that allowed for a second unit and that the applicant would go before the Planning Board to get a Conditional Use Permit (CUP).

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variance for the petition as presented and advertised, and Vice-Chair McDonell seconded.*

Mr. Mulligan said the petition had been before the Board in a few iterations and the application was identical to the one that was approved in 2017, and he saw nothing that would change his mind as to why the variance should not be granted. He said granting the variance would not be contrary to the public interest, and the public's health, safety and welfare would not be negatively impacted. He said the Planning Board still had to approve the CUP for the use, and the frontage would not violate the spirit of the ordinance. He said granting the variance would not diminish the values of surrounding properties, noting that the construction was already completed and had been in place for some time and hadn't had any negative impact on property values, and putting that construction to use wouldn't either. He said substantial justice would be done because the loss to the applicant would far outweigh any gain to the public if the Board required strict compliance with the frontage requirement. He said denying the petition would result in unnecessary hardship because the property had special conditions, including that it was on a private road and couldn't comply with the frontage requirement no matter what was there, so there was no fair and substantial relationship between the frontage requirement and its application to the property. He said the road was private, but there was sufficient access and adequate space, light, and air. He said that everything that was intended by the ordinance when the frontage requirement was imposed was already in place. He said it was a residential use in a residential zone and met all the criteria.

Vice-Chair McDonell concurred and had nothing to add.

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

III. PUBLIC HEARING – NEW BUSINESS

A) Petition of **Brian Short, LLC, Owner**, and **Alex Vandermark, Applicant**, for property located at **2225 Lafayette Road** whereas relief was needed from the Zoning Ordinance to add a mobile juicery trailer to the property which requires the following: 1) A Special Exception according to Section 10.440 Use #18.40 where this use is allowed by Special Exception. Said property is shown on Assessor Map 272 Lot 2 and lies within the (G1) District.

SPEAKING TO THE PETITION

The applicant Alex Vandermark was present. He reviewed the petition, noting that the trailer would sit on an existing concrete patio and that customers would park in the Custom Pools parking lot. He said the trailer would be designed by a reputable food truck company.

Mr. Parrott asked whether the business would be seasonal or full time and what the hours of operation would be. Mr. Vandermark said the hours in the downtown location were 7 am to 7 pm and that the new location would be open year-round but on a case-by-case business in the winter. Mr. Parrott asked if additional signage close to the road would be applied for. Mr. Vandermark said he would probably have signage within the Custom Pools sign but no additional signage.

Chairman Rheume asked if the utilities would be drawn from the main building or if the trailer would be self-sufficient. Mr. Vandermark said the goal was to eventually have a propane tank for the trailer, but that hooking up to Custom Pool's utilities might be more efficient. Chairman Rheume noted that the CUP was for temporary use and asked what the future plan was. Mr. Vandermark said a drive-through structure was too cost prohibitive, so he wanted to test the market by using a trailer and eventually have a freestanding unit. The temporary use permitted under the ordinance was further discussed.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Lee said there was no time limit put on the variance the Board granted to the Wrap Shack. Chairman Rheume said it was a different circumstance because hours of operation were stipulated and it was a long-term solution, with partial building use. Vice-Chair McDonell said that everything under Section 18 of the ordinance was considered a temporary use, but it included construction trailers and so on. He said the Board would approve the special exception under Section 18.40, which was a use for the seasonal sale of products like Christmas trees, so he thought Section 18.40 likely presumed that the use would be seasonal and Section 18 as a whole presumed a temporary use. He said there was no other place to shoehorn it because it was a trailer and presumed to be temporary or seasonal. He said the request was reasonable and met the

requirements for a special exception. Mr. Formella said the Planning Department would decide how seasonal the business had to be or if it fell within what the Board granted.

DECISION OF THE BOARD

*Mr. Formella moved to **grant** the special exception as presented and advertised, and Mr. Lee seconded.*

Mr. Formella said the petition met the requirements for special exception standards as provided in the ordinance. He said the seasonal aspect of the business seemed to fit and that, even though the applicant said he didn't have a time limit that he could commit to, the trailer use would be seasonal in some way, based on the fact that it wouldn't operate much in winter. He said the Planning Department would do a good job in keeping the business within the parameters of the ordinance requirements. He said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic chemicals, noting that the use was less impactful than the surrounding uses. He said there would be no detriment to property values on account of the location or scale of the trailer, parking areas, accessways, odors, and so on. He said he didn't see any creation of a traffic safety hazard or a substantial increase in the level of traffic congestion because the trailer would not be right on the road, and there was existing parking. He said the trailer would pose no excessive demand on municipal services and no significant increase of stormwater runoff onto adjacent properties or streets. He said the special exception should be granted.

Mr. Lee concurred and had nothing to add. Chairman Rheume said he would support the motion. He said food trucks were becoming more popular and the Planning Department might need to further address what constituted a food truck's permanent or temporary use.

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

B) Petition of **Michael & Cathi Stetson, Owners**, for property located at **406 Lang Road** whereas relief was needed from the Zoning Ordinance for the keeping of chickens which requires the following: 1) A Special Exception from Section 10.440 Use #17.20 to allow the keeping of farm animals where the use is permitted by Special Exception. Said property is shown on Assessor Map 289 Lot 7 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

The applicants Michael and Cathi Stetson were present. Ms. Stetson said they had over eight acres of property and that the coop was located between the house and the woods. She said the coop would meet all the special exception criteria and would not affect her neighbors. She said they wanted no more than 6-8 hens, and no roosters.

In response to Mr. MacDonald's questions, Mr. Stetson said they hadn't raised chickens before but knew other people who had. He said he and his wife did a lot of research and were prepared.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the special exception, and Mr. MacDonald seconded.*

Mr. Parrott said the special exception request met the standards as provided by the ordinance and that chickens were farm animals and were permitted in that district. He said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic materials because the other properties were quite a distance away and the activity was a benign one. He said it would pose no detriment to property values in the vicinity or change in the essential character of the area because the area was more of a rural type, with long distances between the residences, and there were no concerns about parking, access, odors, and so on. He said granting the special exception would pose no creation of a traffic safety hazard or substantial increase in the level of traffic, no excessive demand on municipal services, and no increase of stormwater runoff onto adjacent properties or streets because of the chicken coop's nature. He said the petition met all the special exception criteria and should be approved.

Chairman Rheume said the Planning Staff recommended a stipulation that no more than eight chickens be allowed, and no roosters. Mr. Parrott said he would include the stipulation in his motion, and Mr. MacDonald agreed.

The amended motion was:

*Mr. Parrott moved to **grant** the special exception, with the following stipulation:*

- *That there be no more than eight chickens, and no roosters.*

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

C) REQUEST TO POSTPONE Petition of **Andrew & Katy DiPasquale, Owners**, for property located at **80 Fields Road** whereas relief is needed from the Zoning Ordinance to remove an existing shed and construct a new 117 square foot shed on a 12' x 15' platform which requires the following: 1) A Variance from Section 10.521 to allow a) a 3 foot rear yard where 9 feet is required; and b) a 3 foot left side yard where 9 feet is required. 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 Map 171 Lot 8 and lies within the Single Residence B (SRB) District.

REQUEST TO POSTPONE

Mr. Stith said the homeowner sent an email requesting a postponement to the March meeting due to revised plans that required the resending of the legal advertisement.

*Mr. MacDonald moved to **postpone** the petition to the March 16 meeting, and Vice-Chair McDonell seconded.*

Mr. MacDonald said there was nothing urgent about the petition and that the Board could wait until the applicant was ready to appear before the Board. Mr. McDonell concurred.

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

Vice-Chair McDonell recused himself from the following petition, and Ms. Eldridge took a voting seat.

D) Petition of **Blair Rowlett & Carolina Hoell, Owners**, for property located at **53 Decatur Road** whereas relief was needed from the Zoning Ordinance for the keeping of chickens which requires the following: 1) A Special Exception from Section 10.440 Use #17.20 to allow the keeping of farm animals where the use is permitted by Special Exception. Said property is shown on Assessor Map 260 Lot 101 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

The applicants Blair Rowlett and Carolina Hoell were present and said they wanted to have four chickens. Mr. Rowlett said the property was fenced in and the neighbors were supportive.

There were no questions from the Board. Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

Chairman Rheume said the Planning Staff recommended stipulating no more than four chickens and no roosters. Mr. Mulligan asked to modify the stipulation to six hens, which was typically allowed, so that the applicant would have more flexibility and wouldn't have to return.

*Mr. Mulligan moved to **grant** the special exception, with the following stipulation:*

- *That there be no more than six hens, and no roosters.*

Mr. Lee seconded.

Mr. Mulligan said farm animals such as chickens were permitted under the ordinance and would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said granting the exception would pose no detriment to the properties in the vicinity or change in the essential character of the area due to odors, dust, pollutants, unsightly storage of equipment and so on because none of that applied. He said it would pose no excessive demand on municipal services and would not result in increased stormwater runoff onto adjacent streets or properties. He said the petition met all the criteria.

Mr. Lee concurred and had nothing to add.

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

E) Petition of **Melissa Williamson, Owner**, for property located at **295 Thornton Street** whereas relief was needed from the Zoning Ordinance to construct a two-story addition which requires the following: 1) A Variance from Section 10.521 to allow a 5 foot front yard where 15 feet is required. 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 Map 162 Lot 4 and lies within the General Residence A (GRA) District.

The petition was withdrawn by the applicant.

Chairman Rheume recused himself from the following petition and Vice-Chair McDonell took his seat as Acting Chair. Mr. Hagaman took a voting seat.

F) Petition of **SAI Builders, LLC, Owner**, for property located at **27 Elwyn Avenue** whereas relief was needed from the Zoning Ordinance to install an AC condensing unit which requires the following: 1) A Variance from Section 10.521 to allow an 8 foot right side yard where 10 feet is required. Said property is shown on Assessor Map 113 Lot 28-1 and lies within the General Residence A (GRA) District.

Acting-Chair McDonell stated that the request came before the Board in November 2020, when the request was for a different location and the abutter was concerned with noise, so the petition was denied. He said there was now a new location and a quieter condenser model. He asked whether Fisher v. Dover applied. Mr. Hagaman said he found the application sufficiently changed due to the different location and equipment. Acting-Chair McDonell agreed.

SPEAKING TO THE PETITION

Attorney Derek Durbin representing the applicant and the building contractor Patrick Nyson were present. Attorney Durbin said the condenser units were quieter and were relocated to the middle of the house so that they would have less of an impact on the abutter. He said the abutter submitted a letter of approval. He reviewed the criteria and said they would be met.

Mr. Hagaman asked if the new units were small enough relative to the size of the house that they would need to run all summer long. Attorney Durbin he wasn't sure how often the units would run but knew they were not designed to constantly run. He said the new models were more efficient and most likely adequate for the home's size. Mr. Hagaman asked if the condensers could be located elsewhere on the house if the petition was denied. Attorney Durbin said they considered all the possible locations and determined that the middle of the home was the only feasible alternative due to the way the home was built out. Mr. Nyson said they consulted with the HVAC vendor and felt it was an acceptably sized unit for the house. He said the units were configured differently from the previous ones, which was why the setback was increased from seven to eight feet. He agreed that there wasn't any other feasible location to put the condenser. He said they met with the abutter and that she was in approval.

Acting-Chair McDonell opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present. Acting-Chair McDonell noted that the abutter's letter of support was received. He closed the public hearing.

DECISION OF THE BOARD

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

Mr. Mulligan said the applicant did a nice job of building the house and making it fit in with the neighborhood, and that he also did a good job in cooperating with the abutter and resolving the concern that led to the denial of the original request. He said it was unfortunate that a mistake was made in the condenser's initial design that led to the requirement of the setback relief, but the only other solution would be a substantial redesign of the house, which would be grossly punitive to the applicant. He said granting the variance would not be contrary to the public interest or the spirit of the ordinance because the essential character of the neighborhood would remain residential and the public's health, safety, and welfare would not be threatened. He said substantial justice would be done because the loss to the applicant if the Board required strict compliance with the 10-ft side yard setback meant that the applicant would have to redesign the house and there would be no gain to the public in doing that. He said the values of surrounding properties would not be diminished because the amount of relief requested was very minor. He said literal enforcement of the ordinance would result in unnecessary hardship because the lot was nonconforming and there was no fair and substantial relationship between the purpose of the setback and its application to the property. He said the purpose of the setback ordinance was to ensure sufficient light, air, and emergency access between properties, and putting in small condensers would not negatively impact those purposes. He said the use was a reasonable one, a residential use in a residential zone, and should be approved.

Mr. Hagaman concurred with Mr. Mulligan and had nothing to add.

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

G) Petition of the **Elizabeth Larson Trust of 2012, Owner**, for property located at **668 Middle Street (off Chevrolet Avenue)** whereas relief was needed from the Zoning Ordinance to subdivide one lot into two lots and construct 4, 2-family structures on proposed Lot 2 which requires the following: 1) A Variance from Section 10.513 to allow 5 free-standing dwellings on a lot where only one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 4,517 square feet where 7,500 square feet per dwelling unit is required. Said property is shown on Assessor Map 147 Lot 18 and lies within the General Residence A (GRA) District.

REQUEST TO POSTPONE

Chairman Rheume said the applicant submitted an email noting that the abutter may not have been properly noticed or fully aware of the applicant's intentions, so he was asking to postpone his petition to allow the abutter to review it and provide input to the Board.

*Vice-Chair McDonell moved to **grant** the request for postponement, and Mr. Parrott seconded.*

Vice-Chair McDonell said the reasons were reasonable enough to grant a postponement and that the Board postponed petitions as a matter of course the first time around. Mr. Parrott agreed.

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

Chairman Rheume was recused from the following petition, and Vice-Chair McDonell assumed his seat at Acting-Chair. Ms. Eldridge took a voting seat.

H) Petition of **Gregory & Amanda Morneault, Owners**, for property located at **137 Northwest Street** whereas relief was needed from the Zoning Ordinance to subdivide one lot into two lots and construct a new single family dwelling which requires the following: 1) Variances from Section 10.521 to allow: a) a lot depth of 44.7 feet for Lot 1 and 25.4 feet for Lot 2 where 70 feet is required for each; b) a 3 foot front yard where 15 feet is required; and c) a 6.5 foot rear yard where 20 feet is required. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District.

Acting-Chair McDonell noted that the request in November 2020 to subdivide the lot and build a duplex was denied and that the current request was different because it no longer required relief from lot-area-per-dwelling and required less relief from front and rear yard setbacks. He asked whether Fisher v. Dover should apply. Ms. Eldridge said the petition was substantially different because it was for a single-family home and didn't need a variance for the lot size. Mr. Parrott and Acting-Chair McDonell agreed.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. The applicants Daryl and Reginald Moreau, owners Amanda and Gregory Morneault, and project engineer John Chagnon, were also present. Attorney Phoenix said the relief sought was driven by the lot's width and that the applicant would have to go before the Planning Board for subdivision approval. He said the single-family home would fit much better on the lot than the duplex and that the concern about the turnaround and its use by the city was resolved with the easement. He said they also had letters of support from several abutters. He reviewed the criteria and said they would be met.

Mr. MacDonald said the difference in elevation between the roadway and the lot where the house would be built was tall and steep, and he was concerned about the soil's stability once the plantings were cleared. He asked if a study had been done to ensure that the soil was stable enough to support the roadway with a house there, or whether the applicant had considered steps to mitigate the risk of the road caving in. Attorney Phoenix said most of the steep hill was up the hill and not on the lot, so the applicant wouldn't have the right to remove any shrubbery. He said it was an issue that would be vetted by the Planning Board. Mr. Chagnon said the area where the house would be constructed was flat and below the slope and could be addressed when the construction was reviewed. In response to Mr. Hagaman's questions, Mr. Chagnon said the hillside would run a bit through the property line but there would be a flat area between the house and the property line and a side yard that could be utilized for outdoor activities. He said it would not require a retaining wall because they would add fill and raise the grade. Attorney Phoenix said the easement area had been agreed to by the developers and the City and was wide enough for small and large trucks to maneuver. He said the proposed driveway was for the property owner's use. Mr. Chagnon said the easement would not be exclusive, so the owner could use it to gain access to the garage and Northwest Street. He noted that the petition still had to go through site review, and it was further discussed.

Acting-Chair McDonell opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Andrea Arcito of 121 Northwest Street said she was in support of the project and thought it was a wonderful place to site a small home and mitigate some noise from the bypass.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Joseph Russell representing the abutter Mary Mahoney of 206 Northwest Street said none of their previous concerns had been satisfied. He said the proposed four-bedroom home would command a substantial price instead of being affordable housing, and the existing turnaround would still align with Ms. Mahoney's home and impact her. He said the proposed home had a more traditional look, but the design and layout still didn't fit in with the neighborhood's character because most homes in the area had no connected garages or any garage at all. He said the density and massing would be out of character with the neighborhood due to the lot's configuration, minimal setbacks, and lack of depth. He said the project would

diminish Ms. Mahoney's property's value by having an 84-ft long home and creating a canyon effect between the two homes, and the size and length of the proposed home would dwarf Ms. Mahoney's home. He said the proposed subdivision created the hardship.

Michael Petrin of 239 Northwest Street said he was concerned that the proposed maintenance on the turnaround might cause snow pileup and waters runoff on his property.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said he never stated that the home would be affordable housing, but rather that a house of whatever size would be more affordable due to the lot's location near by the bypass. He said the house would have three bedrooms, not four, and the trucks would back out into the street instead of looping near the abutter's home. He said the density was significant because there was 47 feet between the two homes and the wide expanse of a bypass. He said Ms. Mahoney just did not want a house there. He said the rights of a property owner who had a lot that was more than sufficient to put a home on were balanced against the rights of the neighbor, and he thought there was no comparison in this case.

No one else was present to speak, and Acting-Chair McDonell closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Formella said the request was a reasonable one because the applicant was reducing the proposed home from a duplex to a single-family, which was a significant change, and the lot's shape and size made it unique. He said he could empathize with Ms. Mahoney but wasn't convinced that the project would reduce her property's value because her house was on the water and was sizable. He said when the rights of the property owner were balanced and the criteria were considered, it was more reasonable to allow something to be built on the lot instead of nothing. Mr. Lee said he had supported the duplex and was in more support for the single-family. He said there was a condominium at 250 Northwest Street selling for \$900,000, so he didn't think that building a nice new house in a challenging location was a problem. Mr. MacDonald said he was more concerned about the safety of the public and roadway and thought the Board should view the lot in person to see how steep the grades were and how small the spaces were for retaining soil. Ms. Eldridge said TAC would address the safety issue, and that Mr. Lee had assured the Board that the project would not diminish property values, so she was in favor of the project. Mr. Parrott said he had supported the previous proposal and thought the revised one was even better, and the engineering report made him even more confident that the location was feasible to build upon. He said the embankment had been there a long time and the road wasn't tipping or falling down, so it was a stable site. As a former landlord of various residential properties, he said some people across the street would like the vacant lot as it was and other people would be happy to have a nice new house on it. He said just because an overgrown vacant lot would be changed didn't mean that any nearby property would diminish in value.

Acting-Chair McDonell said he had been opposed to the previous request because he hadn't thought that it met all the criteria, and he had been primarily concerned with the duplex, which he felt would have diminished surrounding property values and altered the essential character of

the neighborhood. He said he thought the neighbor across the street might be affected but that it wouldn't lead to her property's diminishment in value or a change in the essential character of the neighborhood. He said the lot was still wide but was dictated by its shape, and the house wasn't huge but had to look wide enough to get a garage on a lot that was shaped that way. He said there were valid issues about water on neighboring properties and the slope but that they would be addressed during the subdivision process.

DECISION OF THE COMMISSION

*Mr. Formella moved to **grant** the variance for the petition as presented and advertised, and Mr. Parrott seconded.*

Mr. Formella referred to his previous comments. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance. He said subdividing the lot and creating a second lot and granting the relief necessary to build the home would not alter the essential character of the neighborhood because it was a neighborhood of single-family homes that tended to be pretty close to the property line, including the property across the street. He said it would not be a threat to the public's health, safety, or welfare based on Board's purview, and that a subsequent land board could address issues like grading or stormwater runoff. He said substantial justice would be done because if the Board didn't grant the variance, there would be a loss to the applicant and property owner, and he didn't see any gain to the public. He said there would be some impact to the property across the street but that it wouldn't be significant enough to justify leaving the spot vacant. He said granting the variance would not diminish the values of surrounding properties, noting that a few of the Board members with realtor experience agreed. He said the neighbor across the street would be impacted, but he didn't see how her property's value would be diminished because it was oriented toward the water and the fact that there would be a house on the other side of the street between the neighborhood and the bypass didn't convince him that property values in the area would be diminished. He said the property's special conditions included the fact that the lot was uniquely large and shaped, so it was uniquely suitable to be subdivided into a second lot to allow for another home in the neighborhood. He said the relief request was only lot depth and dimension relief to support space, light, and air, and the home would be up against a highway on one side and a house oriented toward the water on the other side, so there was no fair and substantial relationship between the applicant's property and the purpose of the criteria. He said the proposed use was reasonable, a single-family home and not a duplex, and that the project met all the criteria and should be approved.

Mr. Parrott concurred. He said the Board gave the petition a thorough airing and considered all the aspects, listened to the opinions, and addressed the neighbor's concerns. He said the five criteria had not been an easy task to review but had been thorough.

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

*It was moved, seconded, and **passed** by unanimous vote (7-0) to go beyond the 10:00 p.m. time limit.*

Chairman Rheaume was recused from the following petition, and Vice-Chair McDonell assumed his seat at Acting-Chair. Mr. Hagaman took a voting seat.

I) Petition of **CLJR, LLC, Owner**, for property located at **6 Robert Avenue** whereas relief was needed from the Zoning Ordinance allow a martial arts studio which requires the following:
1) A Special Exception from Section 10.440 Use #4.42 to allow a martial arts studio with more than 2,000 square feet gross floor area where the use is permitted by Special Exception. Said property is shown on Assessor Map 286 Lot 17 and lies within the (G1) District.

SPEAKING TO THE PETITION

Robert Marchewka was present on behalf of the applicant. He said the martial arts studio would have less of an impact on the property and surrounding properties than the previous medical product company did. He reviewed the special exception criteria and said they would be met.

Mr. Hagaman asked if the second-floor deck would be enclosed or have a railing. Mr. Marchewka said the deck area most likely would not be used and would be sectioned off. Mr. MacDonald verified that an item listed in the introductory letter to the Board had a typographical error and that there would not be stormwater runoff onto adjacent properties or streets.

Acting-Chair McDonell opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Acting-Chair McDonell closed the public hearing.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the special exception for the petition as presented, and Mr. Parrott seconded.*

Mr. Lee said the request was permitted by special exception and that granting it would not cause any hazard to the public on account of potential fire, explosion, or release of toxic materials. He said there would be no detriment to property values in the area or any change in the essential character of the neighborhood on account of the location or scale of the building, parking, noise, pollutants and so on because it would be just an internal change. He said granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion because it would be a small operation. He said it would pose no excessive demand on municipal services and no significant increase in stormwater runoff onto adjacent properties or streets. Mr. Parrott concurred. He said it would be a quiet activity in an industrial building in a mixed-use area and would be a good use of the property.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 10:17 p.m.

Respectfully submitted,

Joann Breault
BOA Meeting Recording Secretary