

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

7:00 P.M.

September 20, 2022

MEMBERS PRESENT: Arthur Parrott, Chair; Jim Lee, Vice-Chair; Beth Margeson; Paul Mannle; Phyllis Eldridge; Thomas Rossi

MEMBERS EXCUSED: David MacDonald

ALSO PRESENT: Peter Stith, Planning Department

I. Summary of legislative changes enacted through HB1661 and the impact to land use boards.

Former City Attorney Robert Sullivan was present to speak to the legislative changes. He said the change in State law would change the way every zoning and planning board in the State conducted its business, but that the Board had the advantage of having a full-time planning staff of professionals and a Legal Department that could provide them with assistance. He said HB1661 is a State law that is a catch-all of different things, which he gave examples of. He said the language added to the State law was that the Board's decision shall include specific written findings of fact that support their decision, and failure to do so for denied petitions would be grounds for automatic reversal of a disapproval and remand by the Superior Court upon appeal of the decision. He said form documents were prepared for the Board to use that would help them with their findings of fact. He said a property owner has to positively satisfy all the elements of the variance test, and if the Board did not find supporting facts on a particular required element, that would suggest that the applicant should be denied. He said by reviewing and adopting, modifying, or rejecting the suggested facts from the Planning Staff will make the Board's work easier and their decision more sound and defensible. (See meeting video time 7:05 for more detail).

Chairman Parrott said he thought the findings of fact with respect to the value of property were not so simple. Attorney Sullivan said the City dealt with property valuations every day and agreed that there was no yardstick, but a particular act might increase or decrease the values of neighboring properties, which was a decision the Board had to make based on the evidence presented to them by the applicant or opposition. Mr. Rossi asked if the submissions of public comments were facts. Attorney Sullivan said it would depend on the particular comment and that the facts had to be relevant to the elements the Board had to look at.

II. APPROVAL OF MINUTES

A) Approval of the minutes of the August 16, 2022 meeting.

Ms. Margeson moved to **approve** the minutes as presented, seconded by Mr. Mannle. Ms. Margeson said the minutes captured the meeting correctly and seemed complete, and Mr. Mannle concurred. The motion **passed** by unanimous vote, 6-0.

III. OLD BUSINESS

A. **266 State Street** - Request for a 1-year extension (LU-19-79)

DECISION OF THE BOARD

Mr. Mannle moved to **grant** the one-year extension, seconded by Ms. Eldridge.

Mr. Mannle said the Board granted one-year delays all the time and that the applicant had a good reason because the building permit hadn't been issued yet. He said he was in favor of granting a one-time, one-year extension as requested. Ms. Eldridge concurred and had nothing to add.

The motion **passed** by unanimous vote, 6-0.

B. The request of **Joel St. Jean and Mariele Chambers (Owners)**, for property located at **108 Burkitt Street** whereas relief is needed to demolish existing garage and construct new 13' x 30' garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 1 foot left side yard where 10 feet 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 located on Assessor Map 159 Lot 30 and lies within the General Residence A (GRA) District. (LU-22-89)

SPEAKING TO THE PETITION

Applicant Joel St. Jean was present to speak to the petition. He reviewed the petition and criteria and said the criteria would be met. He said the new garage would be 14 feet tall at the center and 10 feet tall at the edge.

Mr. Rossi asked what the height of the existing garage on the sidewall was. Mr. St. Jean said the middle was 11 feet tall and the tallest edge was 7 feet in the back.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Richard Brady via Zoom said he was a direct abutter and wasn't opposed to the new garage but wanted to know where it would be placed because it seemed it would be right on the property line. He said a solid wall would change the structure of his backyard and block his sun.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Margeson moved to **grant** the variances as presented and advertised, seconded by Mr. Mannle, with the following **stipulation**:

1. The side yard shall be 2 feet.

Ms. Margeson referred to Sections 10.233.21 and .22 and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said three factors had to be looked at: whether or not the essential character of the neighborhood is altered; whether or not the public's health, safety or welfare is threatened; and whether or not there is mere conflict or serious conflict with the zoning ordinance. She said the replacement of the garage in a residential area would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. She said there is just a mere conflict with the spirit and intent of the ordinance in that the setbacks are meant to improve light, air and circulation. She said this application improves the setbacks from 0 to 2 according to the latest survey, so a stipulation is needed. Referring to 10.233.23, she said granting the variances would do substantial justice, noting that there must be a benefit to the public which is outweighed by the loss to the applicant. She said she did not find that the application would result in any benefit to the public because it was just a garage. She said granting the variances would not diminish the values of surrounding properties, noting that the Board did not receive any evidence, but the replacement of an old dilapidated garage that created stormwater problems with a new functional garage that better serviced the house would definitely enhance the values of surrounding properties. She referred to 10.233.25, literal enforcement of the provisions of the ordinance would result in unnecessary hardship, and the property has special conditions that distinguish it from others in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance and the specific application of that provision to the property; the proposed use is a reasonable one. She said the property does not have special conditions because a lot of properties in the surrounding area are also 50 feet wide, but every house surrounding the property has structures that are within the setbacks. Therefore, there is an existing nonconformity in the neighborhood and she did not find that the application of this particular provision, which is a side yard setback, is reasonable with respect to the application to this property. She said the proposed use is a reasonable one, a garage for a house in a residential area, and moving the garage would encroach on some part of the setback. She said there's a large 20-ft yard setback in the back of the property, so she found that there was no other place for the garage to go. Mr. Mannle concurred and had nothing to add.

The motion **passed** by unanimous vote, 6-0.

- C. The request of **Jeffrey C. Christensen (Attorney for the Appellants)**, for property located at **225 Banfield Road** for a rehearing of the May 24, 2022 decision of the Zoning Board of Adjustment's granting of a request for variances to demolish the existing building and constructing a new 5 unit commercial building and 60 unit residential building with underground parking which requires the following: 1) A Variance from Section 10.440 to allow a 60 unit residential building where residential uses are not permitted in the Industrial district. Said property is located on Assessor Map 254 Lot 1 and Map 266 Lot 1 and lies within the Industrial (I) District. (LU-22-91)

SPEAKING TO THE PETITION

Attorney John Cronin representing the applicant asked for five additional minutes. It was moved, seconded and passed by unanimous vote (6-0) to **grant** the extra five minutes for the presentation.

Attorney Cronin reviewed the site and noted that a residential home sat in the middle of the lot. He said the proposal for 60 residential units was not for workforce housing but would be less rent than downtown residences and would eventually cause area rents to be lowered. He said it would consist of studios and one-bedrooms, with an estimated three children living there. He reviewed the criteria and said they would be met. He noted that Pike Industries was offered an indemnity in case the building residents sued. He emphasized that the area was a mixed-use one.

Mr. Rossi asked how an additional building of 60 units of housing would lower rents in the area yet have no impact on the value of surrounding or nearby residential properties. Attorney Cronin said the building would be new and would provide housing that was in short supply. He said every time a new apartment building was built in Manchester, for example, his rents had to go down to keep his place full because it was an older mill building, so at some point in time, there was an equilibrium between supply and demand. Mr. Rossi asked about the rationale behind offering Pike Industries indemnification against claims for harm and so on and asked whether that wasn't a tacit acknowledgement that harm was a possibility for people who would reside there. Attorney Cronin said he did not think it was an acknowledgement and didn't believe the project would have any impact on Pike Industries, based on the buffer and the nature of the community, but to be safe, he recommended that the applicant put provisions in the lease. He said a tenant would acknowledge that they lived near Pike Industries and that there might be loud noises, odors, trucks, and so on, but that the tenant would have no legal basis to make a claim, and if they did, the applicant would indemnify Pike Industries for any resulting damages. Mr. Rossi concluded that it was meant to address financial liabilities and not potential underlying health liabilities for the tenants. Attorney Cronin said the tenants would already have their claim and could not disclaim any health concerns through a lease contract. He said a landlord had the duty under the law to make their place of residence safe, so the tenant would already have that right.

Ms. Margeson said Attorney Cronin was not certain that there wouldn't be any health and safety problems to tenants. She said the Board's criteria stated that a project would not threaten the

public's health, safety, and welfare and that the applicant could not indemnify their way out of that. Attorney Cronin said the same health criteria would apply and that there was a lot of distance between Pike Industries and the residential and field. He noted that if there were any health issues, the community fields would be closed because those folks were at the most risk. He said that, relating to safety, fire trucks would not have trouble getting access to the building and the building would be built to the latest life safety codes. Relating to the public's welfare, he said there was no indication that the resident already living in the middle of the site had their welfare impacted. Ms. Margeson said the applicant had to prove that the conflict would not be great according to the standards for getting a variance, and the fact that there are two more incompatible uses in residential and industrial were a direct conflict. In terms of a use variance, she said it ran the risk of spot zoning. Attorney Cronin gave an example of the downtown salt piles and trucks backing up constantly, with no impact on the nearby residences. He said there would be no need to have a Zoning Board or variances because almost every variance would be a spot zone. He said a variance was better than rezoning because it gave the Zoning and Planning Boards controls to include lease terms and indemnification, which weren't things that could be gotten by rezoning.

Mr. Mannle asked if Attorney Cronin was prepared, as part of the lease agreement or agreement with Pike Industries, to indemnify if any resident sued for any reason, including health reasons, and if he would do the same for the City. He said if a resident was determined that they had enough evidence to say that their suffering was caused by Pike Industries and they weren't able to sue Pike, they would come after the City because the City allowed it to happen. Attorney Cronin said he would recommend to his clients to get the benefit of the City's immunity for any claims. Ms. Eldridge said she didn't know why the Board would be comforted by the indemnification that indicated that it may be true that there were concerns about health and safety but it didn't matter. Attorney Cronin said the evidence submitted indicated that there would be no impact to health, safety and welfare, but because people were concerned about it, his client wanted to provide extra security by indemnification. Mr. Rossi said indemnification was beside the point because the Board's job was to ensure that zoning decisions were made in the best interest of health and safety.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Jeffrey Christensen representing the appellants and Larry Major representing Pike Industries were present. Mr. Major said there was currently a recycling pile where concrete is crushed and hot mix pavement is used and that most complaints arose when residences were built near that area. He said the neighborhood was an area in transition and that it was an industrial zone, not a mixed-use zone or a residential zone. He said Pike Industries was required to work at night, resulting in a lot of noise. Attorney Christensen said no one wants an asphalt plant in the middle of a residential area and that there were good reasons to segregate the uses, including protecting the residents from industrial side effects and protecting the industrial uses from concerns of having

residents next door. He said being sued by the neighbors wasn't the only risk because they would also call the City to complain. He said all the concerns could not be addressed by an indemnity or lease agreement. He said there were good reasons for segregating those uses in the ordinance. He said the nearby recreational fields were different from residential areas where people were trying to sleep or have a quiet dinner. He pointed out that there was no way to estimate that there would only be three children living in the complex, and that a child might wander to a gravel pit that was only 15 feet away. He referred to the hardship and said there was no unique condition that made a residential use more appropriate on the applicant's property than on the surrounding properties and that the whole area could be rezoned only if the industrial uses were lost. He said there was a fair and substantial relationship between the purpose of zoning and the prohibition of a residence on that property, including the risk to the residents and the burden on the residential use. He said Pike Industries would have a hard time selling its property if residents lived next door. He said the essential character of the industrial area would be altered. He said the housing shortage didn't mean that residences should be built anywhere there was empty space.

Vice-Chair Lee said he still felt that it was a transitional zone, noting that more houses were built after Pike Industries was built. Attorney Christensen said the fact that the residences and uses are spreading out from the City makes it more important not to drive out the industrial uses, and it was also important that a school or field is different than a residence. Vice-Chair Lee said he did a site walk and thought the 6-ft fence around Pike Industries would prevent someone from wandering there. He said he watched Pike's operations and didn't notice any noxious odors, and he felt that a young athlete playing on the nearby field wouldn't be in any health danger. Attorney Christensen said Pike Industries' concern was more about noise than air quality, and someone playing in a field for a few hours wasn't the same as a resident living there year round. He said 60 or more tenants who might complain would diminish any potential purchases of Pike Industries.

Chairman Parrott asked if there was anything that defined what the buffer zone separation should be. Attorney Christensen said there was no inherent requirement when a city is enacting a zoning ordinance that they can't put an industrial zone within the range of a residential zone but there was a reason why the property was dedicated exclusively to industrial. Chairman Parrott said the land had been vacant for decades and should have been developed for industrial use at some point. Attorney Christensen said the Pike Industries property and those surrounding it would be diminished and a new buyer would not want to purchase it, so Pike Industries would either discontinue their development or scale down. Chairman Parrott said there wasn't a lack of industrial property in the City and thought the argument that a property shouldn't be used for residential because someone might want to put industrial on it didn't hold. Attorney Christensen said it was more about preserving the industrial purposes that were already there. Chairman Parrott said the tenants would make the decision to move into that area and the City wasn't in the business of telling people where they could and couldn't live. As a landlord, he said he knew people with children had no interest in a one-bedroom because there simply wasn't enough room.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Jarod Temple said he worked for Aggregate Industries, which was next to Pike Industries. He agreed with Attorney Christensen that it was more about the value of the businesses and not the

value of the industrial property. He said a lot of work got done at night, and if more residential homes were built in that area, it would force the industrial businesses to be pushed out.

Rick Becksted of 1395 Islington Street said the air quality in the fields was monitored. He said the difference between living year round in the area and partial use of fields was completely different. He said Pike Industries had been there a long time and was separated from the few residences there. He said the idea that building more housing would cause prices to go down wasn't true and had not helped the City lower the cost of rentals because it was based on square footage.

Will Arvelo, Executive Director of the Crossroads House, thought zoning was defined by locality. He said there were places where industrial and residential co-existed happily and he believed that housing of all types had to continue to be built to maintain a healthy community and economy.

Meme Wheeler said she was Executive Director of the Chase Home and was in favor of the project because more housing was needed so that staff members could live closer to their work.

Christian Stawcamp said he worked in commercial mixed-use real estate and supported the project because the biggest issue was finding places for employees to live.

No one else spoke, and Chairman Parrott closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rossi said he would not support granting the variances because he didn't think it met all the criteria. He said he was swayed by the letter written by Kim McNamara of the Portsmouth Department of Health because she was an expert best positioned to opine on whether or not there would be a future health hazard for the residents on the proposed development. He said he gave that extraordinary weight that this would not be in the interest of public health. Vice-Chair Lee read RSA 674:33 and said the project would not change the essential character of the neighborhood and that he did not find anything in Ms. McNamara's letter indicating a safety issue, except that there may be a safety issue. He said he would support the petition. Ms. Margeson said she didn't vote for the initial application and wouldn't support this one because there were significant health, safety, and welfare issues. She said Ms. McNamara's letter brought up several of those and that they hadn't been addressed by the applicant. She said she saw no hardship and that there was more than a mere conflict with the zoning ordinances and the need to separate residential and industrial uses. Ms. Eldridge said she supported the initial application but had learned new things, especially from Ms. McNamara's letter, and that the night operations changed her mind. She said it would change the essential character of the neighborhood and that she could not support it.

DECISION OF THE COMMISSION

Vice-Chair Lee moved to **grant** the variances for the application as presented and advertised. Chairman Parrott seconded.

Vice-Chair Lee referred to Sections 10.233.21 and .22, granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, and said he agreed. He said the area was not purely an industrial zone but was a transitional one, noting that there were residences on Banfield Road and a sports field nearby, 20 new houses across the street, and St. Patrick's Academy. Referring to Section 10.233.23, granting the variances would do substantial justice, he said the benefit to the applicant would not be outweighed by any harm to the general public. Referred to Section 10.233.24, granting the variances would not diminish the values of surrounding properties, he said there were statements from experts in the field that deal with commercial and industrial real estate that said the project would not diminish the values of surrounding properties. He said as a realtor that he agreed. Referring to 10.233.25 about unnecessary hardship, he said the property has special conditions that distinguish it from others, namely that the applicant wants to build a residential project in an industrial/transitional zone, so it can't be reasonably used in strict conformance with the ordinance and the variance is necessary to enable the reasonable use of it.

Chairman Parrott agreed and said he believed that the people who were likely to rent an apartment on that property would make a value judgment as adults in their own best interests. He said in his experience as a landlord that some of those developments might not work, but someone was willing to invest the money in Portsmouth to create badly-needed housing at the lower end of the rent scale and there tended to be a turnover in that kind of property, so no one would live there for an extended period of time, which would also mitigate any potential adverse health effects.

The motion **failed** by a vote of 4-2, with only Chairman Parrott and Vice-Chair Lee voting in favor.

Mr. Rossi cited as the overarching fact the letter from Ms. McNamara outlining her view of the health hazards associated with the proposed development. He said he saw her as an expert whose authority and knowledge in the matter supersedes any opinions the Board might have about it, and because of that, he found that the project did not meet the criteria. Ms. Margeson said the proposed variance should not unduly conflict with the ordinance. She said it was an ordinance for residential use in an industrial area, which was a total conflict with the industrial zoning of the area. She said she agreed about Ms. McNamara's letter and her concerns about possible health consequences to people living in the building. She said it was disconcerting that people who didn't have as much money to spend on rent would be placed smack dab in an industrial area. In terms of hardship, she said the applicant was trying to create more affordable housing for the City but would still use part of the property for industrial use and had not demonstrated that he couldn't use the rest of his property for industrial use, so she did not think there were special conditions. Mr. Mannle referred to the criteria of granting the variance would not diminish the values of surrounding properties and said that would be true except for Pike Industries, who made the case that if they sold to another owner for the same purpose, the potential buyer would see an apartment building next to the waste pits and would lower the offer substantially because they would have to deal with the residential area. He said it was speculative as to whether or not the residents would complain, but it would be an issue for someone buying that property as an ongoing industrial use.

IV. NEW BUSINESS

- A.** The request of **Jessica Tia Nashahl (Owner)**, for property located at **1344 and 1346 Islington Street** whereas relief is needed to construct a new deck and add detached garage which requires the following: 1) Variances from Section 10.521 to allow: a) a 28' rear yard for the deck where 30' is required; b) a 2' left side yard where 10' is required for the garage; and c) a Variance from Section 10.521 to allow 30% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 98 and lies within the Single Residence B (SRB) district. (LU-22-160)

SPEAKING TO THE PETITION

Project manager Jeff Domingos was present on behalf of the applicant. He said they would build one large single deck for the family and grandparents to share. He responded to questions asked by Mr. Rossi pertaining to the criteria.

Jan Opria of 1344 Islington Street said she was the grandmother moving into half of the duplex. She explained why the garage and new deck were needed and that a fence would be built for privacy. Vice-Chair Lee asked her questions pertaining to the criteria and she said each one would be met.

Chairman Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Brad and Carol Meade of 1324 Islington Street said they were abutters. Mr. Meade said they had not seen what the garage would look like and the property had not been surveyed. He said the applicant was basing the garage on what he thought was the property line. He said his concerns included the foundation, drainage issues, snow removal, and loss of sun for his plants.

Jill Tapscott of 163 Melbourne Street said she lived behind the property. She said the applicant wanted a large deck that would look directly into her yard and patio space and affect her privacy. She said her concerns also included noise, water runoff from the garage, the foundation, and diminishment of her property values. She said she had not seen any plans. Vice-Chair Lee said there was a similar deck on another neighbor's house, and he asked if Ms. Tapscott heard conversations from that deck. Ms. Tapscott said she heard them if she was on that side of the yard but not from her patio. Mr. Rossi asked if the deck provided an additional view from the applicant's windows that wasn't already there, and Ms. Tapscott agreed.

Ralph Dibernado of 1374 Islington Street said he lived one house lot away from the applicant. He said he agreed with the previous two speakers' issues and said there was no unnecessary hardship with the property and that there were reasons for setbacks.

Barbara Marino of 1345 Islington Street said she lived across the street from the applicant. She said the applicant should comply with the criteria and that she was in favor of a smaller garage or no garage at all. She said she agreed with the comments about the deck.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Becksted of 1395 Islington Street said the application was not complete because it didn't show the scale, and he suggested that the petition be postponed so that the neighbors and the applicant could discuss the project further and so the applicant could prepare more detailed drawings.

Helton Rodriguez said he was the construction manager and that they did a survey and had a design but were waiting for approval first. He said they planned to build a drain inside the lot to contain the water and that there was adequate space in the front to move the snow. He said the garage could be made smaller and that they wouldn't cross the property line to do the work. Ms. Margeson said drawings and presentations were considered to be conditions upon which the variance is granted and that any additional drawings needed to be submitted to the Board before the project was approved. Mr. Rodriguez said he would submit the plans. Ms. Eldridge said she didn't think the Board could go forward without the plans but thought the additional information given was helpful. Vice-Chair Lee said it was important to know exactly where the property lines were.

Ralph Dibernado said there was no stormwater runoff piping system in that area except on Melbourne Street and that the applicant might need to talk to the City.

Brad Meade said everything that the applicant's representative said would be done, like the fence, drainage, and so on would be in writing.

No one else spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Lee moved to **continue** the petition to the October 18 meeting so that the applicant could complete the application. Mr. Rossi seconded.

Ms. Margeson commented that the applicant wasn't prepared to address the five criteria, which was his responsibility as an applicant. She said the Board based their decision on those five criteria. Vice-Chair Lee said he had nothing to add. Mr. Rossi beseeched the applicant to work more closely with their neighbors so that the Board didn't have to resolve controversies when he returned.

The motion **passed** by unanimous vote, 6-0.

It was moved, seconded, and passed unanimously (6-0) to continue the meeting beyond 10:00.

- B.** The request of **Martin Hanssmann (Owner)**, for property located at **130 Gates Street** whereas relief is needed to add an HVAC unit which requires the following: 1) A Variance

from Section 10.515.14 to allow a 3' setback where 10' is required. Said property is located on Assessor Map 103 Lot 55 and lies within the General Residence B (GRB) and Historic districts. (LU-22-161)

SPEAKING TO THE PETITION

The applicant was not present.

DECISION OF THE BOARD

Vice-Chair Lee moved to **continue** the petition to the October 18 meeting, seconded by Mr. Mannle. The motion **passed** by unanimous vote, 6-0.

Chairman Parrott recused himself from the following petition, and Vice-Chair Lee was Acting Chair.

- C. The request of **George Pappas (Owner)**, for property located at **170 Melbourne Street** whereas relief is needed to add a 12 x 12 shed which requires the following: 1) A Variance from Section 10.573.20 to allow an 8' left side yard where 10' is required. 2) A Variance from Section 10.571 to allow an accessory structure to be located in the front yard. 3) A Variance from Section 10.521 to allow 26% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 69 and lies within the Single Residence B (SRB) district. (LU-22-151)

SPEAKING TO THE PETITION

The applicant/owner George Pappas reviewed the petition and criteria.

Mr. Rossi asked about the front yard. Mr. Stith explained that the front yard was 30 feet, not only the setback but also into the lot, so within that 30 feet the shed was behind the house but still in the front yard. Ms. Margeson asked if the neighbors had sheds that could be seen from the front. Mr. Pappas said the neighbors next door and across the street did.

Acting Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variances for the petition as presented, seconded by Ms. Eldridge.

Mr. Rossi said granting the variances would not be contrary to the public interest and the spirit of the ordinance would be observed because the project would not alter the essential character of the

neighborhood. He said the lot line clearance was consistent with the neighbor's shed, which was a supporting factor. He said substantial justice would be done because there was no detriment to the public that would outweigh the loss to the applicant if he were not allowed to have the shed. He said granting the variances would not diminish the values of surrounding properties due to the consistency with the character of the rest of the neighborhood. He said having a shed to keep equipment in instead of strewn about the yard would be good for the neighborhood. He said there were special conditions, in particular the setback from Melbourne Street that diminished and changed some of the clearance calculations and makes it appear that the shed is in the front yard when it really isn't, and that was a special condition that needed to be considered in terms of the equitable use of the property. Ms. Eldridge concurred and had nothing to add.

The motion **passed** by a vote of 4-1, with Ms. Margeson voting in opposition.

Chairman Parrott resumed his seat as Chair, and Acting Chair Lee resumed his seat as Vice-Chair.

- D.** The request of **Debra Klein and Natan Aviezri Revocable Trust (Applicant and Owner)**, for property located at **75 Monroe Street** whereas relief is needed to extend existing dormers on both sides of the house which requires the following: 1) Variances from Section 10.521 to allow a) an 11.5 foot rear yard where 20 feet is required; and b) a 5.5 foot side yard where 10 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 located on Assessor Map 168 Lot 27 and lies within the General Residence A (GRA) district. (LU-22-162)

SPEAKING TO THE PETITION

Attorney Monica Kaiser was present on behalf of the applicant and reviewed the petition. She said they wanted to expand the dormers to the edge of the home and that there would be no increase to the overall footprint. She reviewed the criteria and said they would be met.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variance variances for the petition as requested, seconded by Vice-Chair Lee.

Mr. Rossi said it is a minimal change to an existing structure that is nonconforming and does not change the conformance of the property in any way. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because it is not introducing change to the property other than a cosmetic change of the exterior. He said substantial justice would be done

because there is no harm to the public by extending the dormers and therefore nothing to outweigh the loss to the applicant. He said the values of the surrounding properties would not be diminished, noting that he saw the property and the revision was consistent with what's in the neighborhood and would probably be an improvement. He said literal enforcement of the ordinance would serve no purpose and would present a hardship to the enjoyment of the users.

Vice-Chair Lee concurred and had nothing to add. The motion passed by unanimous vote, 6-0.

- E. The request of **Rob Currao (Applicant)**, and **Bursaws Pantry LLC (Owner)**, for property located at **3020 Lafayette Rd** whereas relief is needed for a proposed retail cabinetry outlet which requires the following: 1) A Special Exception from Section 10.440, Use #8.31 to allow retail sales conducted within a building which is permitted by special exception. Said property is located on Assessor Map 292 Lot 152 and lies within the Mixed Residential Business (MRB) district. (LU-22-158)

SPEAKING TO THE PETITION

The applicant/owner Rob Currao reviewed the petition and special exception criteria. The Board had no questions.

Chairman Parrott opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** the special exception for the petition as presented, seconded by Ms. Margeson.

Mr. Mannle said it would meet the standards of the ordinance for particular uses permitted by special exception. He referred to the related sections of the ordinance and said granting the special exceptions would pose no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic fumes and would reduce all of that. He said it would pose no detriment to property values in the vicinity or change the essential characteristics of the neighborhood including residential or businesses in industrial districts on account of the location and scale of the building and other structures, parking areas, accessways, odors, smoke, gas, dust or other pollutants, noise, glare, heat, and so on. He said it was going from a retail convenience store to a retail showroom. He said granting the special exception would pose no creation of a public safety hazard or substantial increase in the level of traffic or traffic congestion in the vicinity. He noted that the building was in a corner and the parking lot was to the right. He said it would pose no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police, fire, and schools but that it would have water, sewer, and possibly waste disposal, which was standard for

any house or retail building. He said it would pose no significant increase of stormwater runoff onto adjacent properties or would be a lot less than what was there now. He said it met all the criteria.

Ms. Margeson referred to Section 10.232.21 and said Section 8.31 of the zoning ordinance allowed for non-related retail services to be conducted in a mixed residential-business zone. With respect to Section 10.232.23, she said the mixed residential business zone provides areas where there are a limited range of businesses, establishments, and live-work units that can be located near or adjacent to residential developments, so having a retail sale business will not be detrimental to the property values in that area.

The motion **passed** by unanimous vote, 6-0.

- F. The request of **Judith A. Mraz Revocable Trust (Owner)**, for property located at **11 Walden Street** whereas relief is needed to install a heat pump which requires the following:
- 1) A Variance from Section 10.515.14 to allow a 1 foot rear yard setback and a 1.5 foot side yard setback where 10 feet is required for each. Said property is located on Assessor Map 101 Lot 17 and lies within the General Residence B (GRB) and Historic districts. (LU-22-177)

SPEAKING TO THE PETITION

The applicant was not present.

DECISION OF THE BOARD

Mr. Mannle moved to **continue** the petition to the October 18 meeting, seconded by Mr. Rossi. The motion **passed** by unanimous vote, 6-0.

V. OTHER BUSINESS

There was no other business.

VI. ADJOURNMENT

The meeting was adjourned at 11:04 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary