

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

7:00 P.M.

**JUNE 27, 2017
Reconvened From
June 20, 2017**

AGENDA

III. PUBLIC HEARINGS – NEW BUSINESS (continued from June 20, 2017)

8) Case 6-8

Petitioner: Regeneration Realty Trust, Jonathan Bobbett, Trustee
Property: 3612 Lafayette Road
Assessor Plan: Map 297, Lot 3
Zoning District: Gateway
Description: Increase interior office space by 1,330 square feet with less than the required parking.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.1112.30 to allow 113 off-street parking spaces where 116 are required.

9) Case 6-9

Petitioner: Revision Development LLC
Property: 90 Cutts Street
Assessor Plan: Map 209, Lot 19
Zoning District: General Residence A (GRA)
Description: Demolish existing dwelling and garage and construct a new two-family dwelling with attached garages.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.521 to allow a 12.5'± rear yard where 20' is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,005± s.f. where 7,500 s.f. is required.

10) Case 6-10

Petitioners: Charles A. & Patricia Corlin Family IV Trust, Charles A. Corlin, Trustee
Property: 736 Middle Street
Assessor Plan: Map 148, Lot 24
Zoning District: General Residence A (GRA)

Description: Construction of a new deck.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow a 2'± left side yard and an 8'± right side yard where 10' is required for each.
 2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the Ordinance.

11) Case 6-11

Petitioners: Petition of Charles W. Carrigan Living Revocable Trust 06, Charles W. Carrigan Trustee, Kevin Foley, applicant
 Property: 129 Market Street
 Assessor Plan: Map 106, Lot 35-C
 Zoning District: Character District 5 (CD5) and the Downtown Overlay District (DOD)
 Description: Convert office space in Unit C to two condo units with less than the required parking.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.1115.21 to allow 0 (zero) off-street parking spaces where 4 parking spaces are required.

12) Case 6-12

Petitioner: Thirty Maplewood, LLC
 Property: 46-64 Maplewood Avenue
 Assessor Plan: Map 125, Lot 2A
 Zoning District: Character District 4 (CD4) and the Downtown Overlay District (DOD)
 Description: Relief from parking requirements for proposed mixed use building.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.1114.21 to allow one 8'± x 19'± parking space where 8.5' in width is required.
 2. A Variance from Section 10.1114.32(a) to allow ten (10) stacked parking spaces.

13) Case 6-13

Petitioners: Peter Brown Living Trust, James A. Mulvey Revocable Living Trust, Peter Brown and James A. Mulvey, trustees and Robert J. Bossie Revocable Trust, Robert J. Bossie, Trustee, owners and Paul Holloway, applicant
 Property: 150 Spaulding Turnpike, 157 Farm Lane and Farm Lane (number not assigned)
 Assessor Plan: Map 236, Lots 34, 35 & 36
 Zoning District: General Business (GB)
 Description: Change of use to convert a building into an auto sales office and inspection station and demolish two structures on adjacent lots to allow for new vehicle storage as a principal use.

- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.592.20 to allow storage and sales of vehicles within 200’ of a Residential Zone.
 2. A Variance from Section 10.440, Use 20.61 to allow outdoor storage of vehicles as a principal use.
 3. A Variance from Section 10.843.21 to allow parking and outdoor storage of vehicles 15’ from a street right-of-way where 40’ is required.
 4. A Variance from Section 10.581 to allow the sale of used motor vehicles on a nonconforming lot of less than 2 acres.
 5. A Variance from Section 10.311 to allow the storage of vehicles on a nonconforming lot of less than 1 acre.

IV. ADJOURNMENT

NOTICE TO MEMBERS OF THE PUBLIC WHO ARE HEARING IMPAIRED

If you need assistance to attend a meeting, please contact the Human Resources Department at 610-7274.

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koepenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment at its reconvened meeting on June 27, 2017** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, Vice Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Patrick Moretti, Arthur Parrott, Alternates John Formella, Peter McDonell

EXCUSED: Christopher Mulligan

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III. PUBLIC HEARINGS – NEW BUSINESS (continued from June 20, 2017)

8) Case 6-8

Petitioner: Regeneration Realty Trust, Jonathan Bobbett, Trustee
Property: 3612 Lafayette Road
Assessor Plan: Map 297, Lot 3
Zoning District: Gateway
Description: Increase interior office space by 1,330 square feet with less than the required parking.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.1112.30 to allow 113 off-street parking spaces where 116 are required.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Providing three less off-street parking spaces than required will not be apparent to the general public so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.

- Substantial justice will be done. This has been operated as a commercial property for many years so that granting the variance will benefit the applicant with no corresponding harm to the general public.
- The value of surrounding properties will not be diminished by allowing a few less parking spaces than are required on a lot with a number of parking spaces available.
- Not granting the variance would create a hardship in trying to adjust configurations that are already in place to create additional spaces.

9) Case 6-9

Petitioner: Revision Development LLC

Property: 90 Cutts Street

Assessor Plan: Map 209, Lot 19

Zoning District: General Residence A (GRA)

Description: Demolish existing dwelling and garage and construct a new two-family dwelling with attached garages.

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

1. A Variance from Section 10.521 to allow a 12.5'± rear yard where 20' is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,005± s.f. where 7,500 s.f. is required.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. There are a number of multi-family properties in the area and the size and style of the proposed structure is similar to others nearby so that the proposal for this lot will not alter the character of the neighborhood.
 - Substantial justice will be done by allowing the owners reasonable development of their property with no harm to the general public.
 - The value of surrounding properties will not be diminished by a well-designed structure in keeping with the neighborhood.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. The shape and narrowness of the lot make it difficult to design a reasonable structure that can accommodate current needs and not require relief from the ordinance requirements.
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10) Case 6-10

Petitioners: Charles A. & Patricia Corlin Family IV Trust, Charles A. Corlin, Trustee

Property: 736 Middle Street

Assessor Plan: Map 148, Lot 24

Zoning District: General Residence A (GRA)

Description: Construction of a new deck.

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

1. A Variance from Section 10.521 to allow a 2'± left side yard and an 8'± right side yard where 10' is required for each.
2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the Ordinance.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Replacing an existing deck with an open deck that is further from the property line that will maintain light and air will not be contrary to the public interest and the spirit of the ordinance will be observed.
- Substantial justice will be done by allowing better access to the home with no corresponding harm to the general public.
- The value of surrounding properties will not be diminished by providing a more conforming and attractive deck.
- The special conditions of the property that result in unnecessary hardship include a tight lot with an existing home built in the early 1900's so that any change to improve access and egress would require relief from the ordinance.

11) Case 6-11

Petitioners: Petition of Charles W. Carrigan Living Revocable Trust 06, Charles W. Carrigan Trustee, Kevin Foley, applicant

Property: 129 Market Street

Assessor Plan: Map 106, Lot 35-C

Zoning District: Character District 5 (CD5) and the Downtown Overlay District (DOD)

Description: Convert office space in Unit C to two condo units with less than the required parking.

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

1. A Variance from Section 10.1115.21 to allow 0 (zero) off-street parking spaces where 4 parking spaces are required.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed. The proposal will not change the essential character of the neighborhood. This lot is similar to many other properties in the area with residences on the upper levels and no space on the lot for parking.
- Substantial justice will be done by allowing the owners a reasonable use of the property with no harm to the general public.
- The value of surrounding properties will not be diminished. This proposed use, with living units above units with commercial uses, is not uncommon in the area.
- The special conditions of the property include the existing building as it is situated on the lot without space for parking and its location in a walkable downtown area.

12) Case 6-12

Petitioner: Thirty Maplewood, LLC
 Property: 46-64 Maplewood Avenue
 Assessor Plan: Map 125, Lot 2A
 Zoning District: Character District 4 (CD4) and the Downtown Overlay District (DOD)
 Description: Relief from parking requirements for proposed mixed use building.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1114.21 to allow one 8'± x 19'± parking space where 8.5' in width is required.
2. A Variance from Section 10.1114.32(a) to allow ten (10) stacked parking spaces.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Parking in a private space in the basement of a private building and out of the public eye will not be contrary to the public interest and the spirit of the ordinance will be observed.

- Substantial justice will be done as the benefit to the applicant in granting the variances will not result in any corresponding harm to a neighbor or the public interest.
- Parking located out of sight within a building will not diminish the value of surrounding properties.
- Located in a congested downtown area where every square foot of land is at a premium and parking is needed to support the proposed uses, strictly applying the ordinance provisions to this property would result in an unnecessary hardship. The proposed use is a reasonable one.

13) Case 6-13

Petitioners: Peter Brown Living Trust, James A. Mulvey Revocable Living Trust, Peter Brown and James A. Mulvey, trustees and Robert J. Bossie Revocable Trust, Robert J. Bossie, Trustee, owners and Paul Holloway, applicant

Property: 150 Spaulding Turnpike, 157 Farm Lane and Farm Lane (number not assigned)

Assessor Plan: Map 236, Lots 34, 35 & 36

Zoning District: General Business (GB)

Description: Change of use to convert a building into an auto sales office and inspection station and demolish two structures on adjacent lots to allow for new vehicle storage as a principal use.

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

1. A Variance from Section 10.592.20 to allow storage and sales of vehicles within 200’ of a Residential Zone.
2. A Variance from Section 10.440, Use 20.61 to allow outdoor storage of vehicles as a principal use.
3. A Variance from Section 10.843.21 to allow parking and outdoor storage of vehicles 15’ from a street right-of-way where 40’ is required.
4. A Variance from Section 10.581 to allow the sale of used motor vehicles on a nonconforming lot of less than 2 acres.
5. A Variance from Section 10.311 to allow the storage of vehicles on a nonconforming lot of less than 1 acre.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulations:

Stipulations:

- A maximum of 50 new cars will be stored on the rear lot at any one time.
- There will be a maximum of 12 used pick-up trucks of any size for sale at any one time.
- No car carriers will be allowed on any of the lots.

Review Criteria:

The petition was granted for the following reasons:

- The proposed use will not alter the essential character of the neighborhood or threaten the public health, safety or welfare. It will be sited exclusively in a General Business Zone on properties adjacent to a turnpike and away from the residential area so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
- Substantial justice will be done and the value of surrounding properties will not be diminished. The proposed use is less intense than a number of uses that would be allowed and the closest neighborhood is additionally buffered by a power line easement.
- There are special conditions of the properties that distinguish them from others in the area and a hardship is created in terms of strictly applying the ordinance provisions. While these are General Business District lots adjacent to a residential area, the practical effect of the power line easement is to increase the true distance from the residential area. The uses in the ordinance requiring a minimum area of one or two acres are mainly directed to full service auto dealerships with a building, many vehicles and high volume traffic. This proposal is more appropriate for the size of these lots, and very different in scope, but is considered to be in the same category as the other, more intensive, uses.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

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

7:00 P.M.

**JUNE 27, 2017
Reconvened From
June 20, 2017**

MEMBERS PRESENT: Chairman David Rheume, Vice-Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Patrick Moretti, Arthur Parrott, Alternates: Peter McDonell, John Formella

MEMBERS EXCUSED: Chris Mulligan

ALSO PRESENT: Peter Stith, Planning Department

III. PUBLIC HEARINGS – NEW BUSINESS (continued from June 20, 2017)

Chairman Rheume recused himself from the following petition and passed the gavel to Vice-Chairman LeMay as Acting Chair. Alternates Mr. Formella and Mr. McDonell assumed voting seats.

8) Case 6-8

Petitioner: Regeneration Realty Trust, Jonathan Bobbett, Trustee

Property: 3612 Lafayette Road

Assessor Plan: Map 297, Lot 3

Zoning District: Gateway

Description: Increase interior office space by 1,330 square feet with less than the required parking.

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SPEAKING IN FAVOR OF THE PETITION

The project architect Shannon Alther noted that they were adding square footage to the existing footprint and would also need three additional parking spaces. She reviewed the criteria and detailed the reasons why she felt they were met.

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

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

DECISION OF THE BOARD

*Mr. Moretti moved to **grant** the variance for the application as presented and advertised, and Mr. Lee seconded.*

Mr. Moretti said the petition was straightforward and referenced a similar petition that was granted a few years back. He said that granting the variance would not be contrary to the public interest because the public wouldn't see or be aware of the minor change to the interior, and a few extra parking spaces were nothing extraordinary. He said it would observe the spirit of the Ordinance because the Ordinance was in place to protect the public and the situation wouldn't pose any great change or hurt the public. He said that granting the variance would do substantial justice because the property was a commercial one in the Gateway District and had been operating many years. He said the value of surrounding properties would not be diminished; he didn't believe any properties in the immediate area would be affected. He said the hardship was that additional changes were required to the property as well as a few extra parking spaces, which wouldn't change the way the property operated.

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

Acting Chair LeMay remarked that a mitigating factor was that there were two substantially different uses at different times of the day, and having the proper number of parking spaces would take the pressure off.

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

Chairman Rheaume resumed his seat as Chairman. Mr. McDonell assumed a voting seat and Mr. Formella resumed alternate status.

9) Case 6-9

Petitioner: Revision Development LLC
 Property: 90 Cutts Street
 Assessor Plan: Map 209, Lot 19
 Zoning District: General Residence A (GRA)
 Description: Demolish existing dwelling and garage and construct a new two-family dwelling with attached garages.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow a 12.5'± rear yard where 20' is required.
 2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,005± s.f. where 7,500 s.f. is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney John Bosen was present on behalf of the applicant to speak to the petition. He passed out a letter of support to the Board. He said that the existing two-story residence and garage were on a nonconforming lot and were in horrible shape. He noted that the parcel was once two separate lots that were merged. He said the property had been vacant since 1965 and the existing house was a long-standing eyesore. He reviewed the criteria and said they were met.

Chairman Rheaume said he liked the proposal but was concerned that joining the two units was to avoid having to ask for additional variances because there could only be one dwelling unit per building site. He asked whether there were other impediments against creating two separate buildings. Attorney Bosen

said they could seek to unmerge the lots but it would still require relief from the Board. He also noted that there was a severe slope. He said the building structures themselves needed setbacks.

Chairman Rheume noted that the setbacks from Beechwood Street and Ashland Street left some room to break the two dwelling units apart. He said his concern was that the neighborhood had a significant number of single-family homes, and the ones that were multi-family homes had older accessory dwellings that may have been outbuildings at one time and were repurposed. He said he wanted to keep the feel of the neighborhood as opposed to having an anomaly of two buildings sandwiched together. He asked whether it was physically possible to have them separated. Attorney Bosen said he understood that the building would look different. Chairman Rheume said that the driver for joining the buildings together was most likely the requirements that there could only be one structure on the lot. He said it seemed different from the rest of the neighborhood but greatly improved the existing situation. Attorney Bosen said the slope had something to do with the reconfiguration.

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

Carey Blake of 2 Beechwood Street said she would prefer one unit but understood that the neighborhood scale was small homes and that the applicant could choose to build a much larger home. She asked whether there was a possibility that in-law apartments could be added if the structure were divided into two. Chairman Rheume said that accessory dwelling units were allowed in single-family dwelling areas, but there were lots of restrictions and the applicant would have to go before several Boards. Ms. Blake asked whether the project would create a 12-1/2' setback for the building and what would happen if they wanted to expand. Chairman Rheume said the applicant would have to come back for more variances.

Johanna Lyons of 18 Cutts Street said her neighborhood was getting a lot of infill and expansion projects. She said she was concerned that the proposal would be two homes with separate garages on the same lot, which would be very different from what was around them. She said she was also concerned about the pressure to build on every available lot and changing the neighborhood's character.

Mark Lombardi of 77 Cutts Street said he preferred to see a single-family home or two single-family homes but appreciated that the design was low profile and not too tall or boisterous.

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

DECISION OF THE BOARD

Vice-Chair LeMay said he wasn't nearly as passionate about having two separate buildings as one and thought it was a bit different from what was in the neighborhood, but he also noted that there was a variety in the neighborhood. He said that, given the shape of the lot and the locations where the setbacks had to be, it could wind up with one house and then another house set back, and he didn't think there would be any net gain by doing that. Mr. Johnson agreed, noting that if the two houses were pulled apart and there was still an attempt to build two houses on the same parcel, there would be an appropriate amount of distance between them and that, based on the design, the houses would be two very similar houses, essentially reading the same as one building. He said he had no problem with the single building.

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

Mr. Johnson said that the presentation spoke for itself. He said he understood some of the neighbors' concerns about it looking different from other houses in the neighborhood esthetically, but he thought it

was a creative solution to get two dwelling units on the lot that were just about big enough to handle it. He said the square footage relief requested was not as small as 50 square feet but approached being something close to easy to get over. He said that the lot was relatively narrow to meet the front and rear setbacks and having the dimensions of a modern house was doable between those setbacks.

Mr. Johnson said that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the neighborhood had mostly single-family homes with 25% of multi-family homes, so he didn't see a drastic effect on the neighborhood. He said there would be no threat to the health, safety and welfare of the public. He noted that the site hadn't been used much in previous years. He said that two single-family homes wouldn't create an intensity in utilities, traffic, parking and believed that substantial justice was done. He said the applicant had the right to develop his property and was asking more than what was allowed but it was within reason and was a creative way to get two units where there was one. He said that granting the variances would not diminish the value of surrounding properties, considering that the current property was in bad shape and the new design was tasteful and would hopefully be an asset to the neighborhood. He said the hardship test was the fact that the shape and nearness of the lot didn't really allow for an easy layout to a floor plan and modern amenities, and that the setback issue would be dealt with. He said the main building met the setback and the encroachment was a relatively small deck and stairway down to the backyard. He noted that the corner lot aspect as well as the shape of the lot also played into the hardship.

Vice-Chair LeMay concurred with Mr. Johnson, adding that he thought it captured the nature of the issue. He said he would bring his other comments forward.

Chairman Rheume said he would support the motion. He noted that one of the abutters brought forward concerns about development. He said rings could be seen forming around Downtown, the first ring being that the development pressure was high, and the second ring getting to the point where there was a desire to develop any available property in those areas. He said the Board couldn't prevent it, but he felt that what was proposed was very positive because it was two dwelling units that were sized tastefully and in keeping with the neighborhood. He said someone could propose a huge house on a lot of that size, but what was proposed was in keeping with the overall spirit of the neighborhood.

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

Vice-Chairman LeMay recused himself from the following petition, and Alternates Mr. Formella and Mr. McDonnell assumed voting seats.

10) Case 6-10

Petitioners: Charles A. & Patricia Corlin Family IV Trust, Charles A. Corlin, Trustee
 Property: 736 Middle Street
 Assessor Plan: Map 148, Lot 24
 Zoning District: General Residence A (GRA)
 Description: Construction of a new deck.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a 2'± left side yard and an 8'± right side yard where 10' is required for each.
2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the Ordinance.

SPEAKING IN FAVOR OF THE PETITION

The applicant Charles Corlin was present to speak to the petition. He said he wanted to add a deck in the same footprint. He reviewed the criteria and said they were met.

Chairman Rheume said he liked that the 1915 drawing of the original floor layout was included in the packet and also liked the reference to the ‘piazza’. He asked why Mr. Corlin thought it was made into a duplex before 1999. Mr. Corlin said there was a fire around 1980. Chairman Rheume asked about the proposal to remove three feet of the setback with part of the deck. Mr. Corlin said the piazza used to extend further on that side and they wanted to pull the deck in a bit to preserve the gambrel structure. He said it was about five feet from the edge of the house. He said the deck would be open and not enclosed.

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

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

DECISION OF THE BOARD

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

Mr. Moretti said that the applicant asked for a minimal advance to the property line of three feet and did not pose a hazard to the public or neighbors, noting that no one spoke against the petition. He said that granting the variances would not be contrary to the public interest because it wouldn’t be seen from the public view and the owner would gain egress. It would observe the spirit of the Ordinance because it was a small infringement to the property line. Granting the variances would do substantial justice because it would give the owner the ability to access the house easily as well as get egress. Granting the variances would not diminish the value of surrounding properties because the house was in bad shape, and the project would improve its value by having a more conforming deck and giving a nicer view to the neighbors. He said the hardship was that the property was tight and the house was built in the early 1900s, and any change to allow egress would require an action by the Board.

Mr. Parrott concurred with Mr. Moretti and said the deck would be a nice enhancement to the house and to the neighborhood.

Chairman Rheume said he would support the motion. He said it was an interesting property and also noted that the applicant previously came before the Board for a garage. He said he appreciated the historical information that the applicant provided. He said it was a minor encroachment of a deck height with an open railing and would improve light and air.

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

Vice Chairman LeMay resumed his seat. Mr. McMcDonell returned to alternate status and Mr. Formella assumed a voting seat.

11) Case 6-11

Petitioners: Petition of Charles W. Carrigan Living Revocable Trust 06, Charles W. Carrigan Trustee, Kevin Foley, applicant
 Property: 129 Market Street

Minutes Approved July 18, 2017

Assessor Plan: Map 106, Lot 35-C
 Zoning District: Character District 5 (CD5) and the Downtown Overlay District (DOD)
 Description: Convert office space in Unit C to two condo units with less than the required parking.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from The Zoning Ordinance including:
 1. A Variance from Section 10.1115.21 to allow 0 (zero) off-street parking spaces where 4 parking spaces are required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Derek Durbin was present to speak to the petition on behalf of the applicant. He introduced the applicant Kevin Foley, the broker Chris Erickson, the owner of the condominium Charles Carrigan and his attorney Jack McGee. Attorney Durbin reviewed the petition, noting that the five-story building was in the CD5 District and had a mix of residential and commercial uses, with no dedicated parking. He emphasized that Unit C was oddly configured and divided into two distinct halves with a stairway running up the middle of it. He said the stairway was the only access to the upper floor condominium units. He said the owner would occupy one half of Unit D on the third floor and that the other half was leased to a local business. Attorney Durbin said the layout was dysfunctional and unattractive to potential buyers or lessees because it was partitioned and very small. He said the applicant proposed to convert the existing commercial condominium into two residential micro units and would live in one of the units. He said the Ordinance didn't impose any parking restrictions for non-residential uses, so the change in use to two residential dwelling units required that three parking spaces be added to the property. Attorney Durbin reviewed the criteria in detail and said they would be met.

Chairman Rheume noted that Unit C2 was the bigger unit and qualified as a micro unit, and that the 390-s.f. unit C1 was in the 'micro-micro' category. He noted the door to the common hallway bathroom and the closet door in the hallway and wanted to ensure that the applicant would be a full-time occupant for that space. Attorney Durbin said the applicant owned a local business and would make use of the space and rent out the other unit. Chairman Rheume said it was a very awkward layout for any use.

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

Attorney Jack McGee said he couldn't add anything to what Attorney Durbin said because he covered all the points. He asked the Board to grant the petition, noting that any hardship had existed since 1803 and there was nothing anyone could do about it.

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

DECISION OF THE BOARD

*Vice-Chair LeMay moved to **grant** the variance for the application as presented and advertised. Mr. Lee seconded the motion.*

Vice-Chair LeMay said the building has existed for thousands of years and never had parking associated with it, so nothing was changed in that regard. He said the two units were little but if people could deal with them and find a parking space somewhere in the City, he was fine with it. He said that granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because it wouldn't change the nature of the neighborhood and would be similar to other units that had no parking. It would do substantial justice by giving the owner some reasonable use of the condominium

chopped in half. He said that granting the variance would not diminish the value of surrounding properties because the use was not inconsistent with the area, and whether it was an office during the day and a bedroom at night didn't matter. He said the special conditions of the property were the building that the condo unit was in and the fact that it was Downtown and the parking in that area was a hardship for many people.

Mr. Lee concurred with Vice-Chair LeMay, noting that his office was right across the street so he was very familiar with the area.

Chairman Rheume said he would support the motion, remarking that the Board had to change their mindset about very small units because there was a market for it. He said that Downtown was very walkable and that a vehicle wasn't really needed except to get to a grocery store.

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

Mr. McDonnell assumed a voting seat and Mr. Formella returned to alternate status.

12) Case 6-12

Petitioner: Thirty Maplewood, LLC
 Property: 46-64 Maplewood Avenue
 Assessor Plan: Map 125, Lot 2A
 Zoning District: Character District 4 (CD4) and the Downtown Overlay District (DOD)
 Description: Relief from parking requirements for proposed mixed use building.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1114.21 to allow one 8'± x 19'± parking space where 8.5' in width is required.
2. A Variance from Section 10.1114.32(a) to allow ten (10) stacked parking spaces.

SPEAKING IN FAVOR OF THE PETITION

Attorney Paul McEachern was present on behalf of the applicant to speak to the petition. He said the underground parking garage would have a building above it. He said they wanted to reduce a single parking space from 8-1/2 feet to 8 feet and that the parking space was next to a handicapped one. They also proposed ten stacked parking spaces that would be assigned to the single unit dwellers or a single family. He reviewed the criteria and said they were met.

Mr. McDonnell noted that the building was a mixed-use one and asked how it would work. Attorney McEachern said there were 30 spaces in the below-grade parking and that they might need 3-4 surface spaces, which would be provided. He said there were 22 units. Mr. McDonnell verified that the stacked spaces would be used solely for residential uses.

Rick Becksted of 1391 Islington Street said it was a minimal request and that the City could have a new parking garage eventually. He said the application was respectful to the residents and gave the City something to be proud of.

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

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

DECISION OF THE BOARD

Mr. Johnson asked Mr. Stitz where the project was in the site review process. Mr. Stitz said he didn't know. Mr. Johnson said the City had a lot of regulations when it came to what appeared to be a single traffic entrance on a ramp and there were rules governing opening sizes to garages. Chairman Rheume said there was a similar issue with the Bridge Street property ramp but didn't think the variance was specific to the ramp and had more to do with the turning radius. He pointed out that the applicant's ramp was for private use.

Mr. Parrott said he noticed that the aisle width in the garage was 22 feet and the City standard was 24 feet. He asked if it was because it was private and inside. Mr. Johnson said the City allowed the 22 feet when it was underground parking.

DECISION OF THE BOARD

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

Mr. Parrott said it was a simple application and that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said it was hard to see where the public interest was because it was a private parking space in the basement of a private building and out of the public eye. He said it would do substantial justice because it related to the public interest and the concern that someone would do something harmful to a neighbor didn't apply in that case because it was in the basement of a private building. He said granting the variances would not diminish the value of surrounding properties because it was underground and out-of-sight parking which was a benefit to the building above it and to everyone else who worked and lived in the area. He said it was advantageous to put needed parking out of sight and off the street. Mr. Parrott said the unnecessary hardship test was that every property had special conditions Downtown, with its congestion and every square foot of land at a premium, particularly for parking, so it satisfied all the criteria and should be approved.

Mr. Moretti concurred with Mr. Parrott and said he wasn't greatly in favor of stacked parking, but it was a private lot and the neighbors and tenants would figure it out. He said the public would have little interest in what went on in that parking lot.

Chairman Rheume said he would support the motion. He agreed that the stacked parking might be a bit tricky but felt that the tenants would learn how to maneuver their vehicles. He said was also a bit concerned about the 8-ft parking spot near the handicapped spot, but it was a private lot and if a tenant needed the handicapped spot, he was sure that the parking would be enforced.

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

Mr. Formella assumed a voting seat and Mr. McDonell resumed alternate status.

13) Case 6-13

Petitioners: Peter Brown Living Trust, James A. Mulvey Revocable Living Trust, Peter Brown and James A. Mulvey, trustees and Robert J. Bossie Revocable Trust, Robert J. Bossie, Trustee, owners and Paul Holloway, applicant
 Property: 150 Spaulding Turnpike, 157 Farm Lane and Farm Lane (number not assigned)
 Assessor Plan: Map 236, Lots 34, 35 & 36

- Zoning District: General Business (GB)
- Description: Change of use to convert a building into an auto sales office and inspection station and demolish two structures on adjacent lots to allow for new vehicle storage as a principal use.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.592.20 to allow storage and sales of vehicles within 200' of a Residential Zone.
 2. A Variance from Section 10.440, Use 20.61 to allow outdoor storage of vehicles as a principal use.
 3. A Variance from Section 10.843.21 to allow parking and outdoor storage of vehicles 15' from a street right-of-way where 40' is required.
 4. A Variance from Section 10.581 to allow the sale of used motor vehicles on a nonconforming lot of less than 2 acres.
 5. A Variance from Section 10.311 to allow the storage of vehicles on a nonconforming lot of less than 1 acre.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech on behalf of the applicant was present to speak to the petition. He introduced Paul Connolly of Civil Works of New England and Joseph Yergeau of Holloway Cadillac. Attorney Pelech reviewed the petition in detail, noting that they proposed to demolish nonconforming structures and replace them with automobile storage. He said there would be no loading or unloading of vehicles, no more than 12 used trucks on the site at any time, and all transport would be done by employees during evening hours. He said there would also be an inspection station in the building to be used only for the vehicles they sold. Attorney Pelech said they had a traffic study done showing that the amount of traffic by the two proposed uses would be considerably less than there presently was. He said the operation would be limited to one side of the power line and would not be visible from Clover Lane or Farm Lane because of the change in topography and the vegetation. He said the site was 300 feet from the nearest residence. He reviewed the criteria in detail and said they would be met.

Mr. Moretti asked what the plan was for lighting, security and fencing. Attorney Pelech said the lighting would go to a motion sensor after the business closed for the day. He said there was no need for security fencing and pointed out that neither abutter had it. Mr. Connolly said the lighting would be LED downward box-type illumination and limited to business hours and would dim overnight.

Mr. Moretti asked about signage. Attorney Pelech said they had to go to site plan review and had not considered signage but assumed there would be a small pylon sign.

Vice-Chair LeMay noted that Attorney Pelech refereed to light trucks and pickup trucks and asked what the difference was. Mr. Yergeau said the necessity for the site was not so much for the growth of the company as it was to meet the current demand for SUVs and ¾-ton pickup trucks, which were larger than conventional automobiles. He said their lot was shrinking due to the larger vehicles and that it made sense to purchase the site to store the vehicles and then feed them into their operation as their inventory reduced. He noted that they had no place to move the cars in the winter when they plowed.

Chairman Rheume said there were twelve spots in the front for sales and asked where the customers would park. Mr. Connolly said the first nine spaces along the conventional pavement were reserved for customer and employee parking.

Chairman Rheume asked how they would do vehicle sales and inspection at the same time. Mr. Yergeau said that in order to sell pickups they had to get plates, and to get plates they had to inspect the vehicles. He said they planned on having a technician come in and then rotate the sales people so that each day one of them would be responsible to work the lot. Chairman Rheume said that it was logical to transfer vehicles from the lot to the main dealership by going a certain route. Mr. Yergeau said it would involve a small number of vehicles and the easiest way was to come right off the turnpike.

Mr. Parrott asked whether there was enough room on the lot to jockey the vehicles around so that they didn't have to park on Farm Lane or anywhere else. Mr. Yergeau said they would stay within the property. Mr. Parrott asked what the dimensions of the stacked array in back of the building were. Mr. Connolly said they were 8-1/2x20 feet and the displayed spaces were 8-1/2x19 feet.

SPEAKING IN OPPOSITION TO THE PETITION

Rick Becksted of 1395 Islington Street said Farm Lane was a residential road that fed in and out of the neighborhood. He said that the applicant was asking for 15 feet from a street right-of-way, or 60% of the 40-ft requirement, which he felt was an impact and a concern for the neighbors. He also noted that the address of the site was actually Farm Lane, not Spaulding Turnpike.

Sherry Brandsera of Woodbury Avenue said there would be a lot of noise at night due to the trucks and was also worried about speeding, pervious parking pavement, and changed setbacks to the neighborhood.

Howard Malyark of Maplewood Avenue said it seemed crowded in that area and suggested that a detour be placed on Farm Lane to prevent increased traffic.

Suzanne Ford of 88 Farm Lane said that people were concerned about a traffic increase on Farm Lane and the effect on their property values.

Lenore Bronson of 828 Woodbury Avenue said she recalled several attempts to develop the area by Nissan and Subaru that were turned down. She said she was concerned about the increased traffic and couldn't see how two trucks could pass one another in the narrow Farm Lane.

SPEAKING TO, FOR OR AGAINST THE PETITION

Attorney Pelech said the address would not be Farm Lane but was only advertised that way because the two buildings had that address. He said the address would be 150 Spaulding Turnpike. He said there would be no car transporters. He said Nissan and Subaru tried to put car dealerships in the residential district but that his applicant's property was in the General Business District. He said the operation would cease at 7:00 p.m. so there would be no noise at night. As for pervious parking, he said the project had to go for site plan review and the Planning Board wouldn't allow anything that would affect groundwater quality. He noted that their comprehensive traffic study showed that traffic would be cut almost in half. He said that the site did not abut any residential properties.

Mr. Becksted said the document was supposed to be public record.

Ms. Bronson said she didn't see any hardship and hadn't received an abutter's notice in time to do more research. She said the project was a blatant infringement on the public interest.

Attorney Pelech said the City had a computer program that sent abutter notices to anyone who lived within 200 feet of the property and noted that most of the neighbors present were not abutters. He said they had a 300-ft power line easement and that the site would not affect the community like Subaru and

Nissan did. He reiterated that it was within the General Business District, reduced traffic, and was out of sight from the residential area.

Ms. Brandsera said that too many variances were needed. She explained why trucks would have to drive through residential roads and how noise they could be.

Attorney Pelech said the three top-selling pickup trucks made no more noise than cars, and no automobile carriers would be on Farm Lane.

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

DECISION OF THE BOARD

Vice-Chair LeMay said there was a substantial difference in the application's nature and degree of the impact on the area compared to Subaru and that the biggest objection with Subaru had been the auto carrier. He said there had also been the issue with Subaru of customers going to the site to get their cars serviced, which meant there was no control of the way the customer would get to the dealership. He said he didn't see that here. He said the applicant would park cars in an area where cars were already parked, probably for a longer period. He said it would be 5-6 cars moved back and forth from the lot to the main dealership and didn't think the small number of trips generated would affect traffic. He also noted that it was primarily auto storage.

Mr. Johnson agreed. He said if the operation was done as represented, it would automatically cap the level of activity at one level at lower than the current abutting uses and previously failed proposed uses. He said the quantity of sales vehicles and the quantity of employees were the represented use of the parking lot and were capped at a level of turnover of the vehicles in the storage lot. Mr. Lee said the power line was an enormous buffer. Mr. Moretti said the current configuration of the property caused vehicles to pull into Farm Lane but the proposed use eliminated that possibility and therefore a big safety issue. He said he understood the neighborhood's concerns but said that something else could be put on that site, like a MacDonald's that would have a much more intense traffic impact.

Chairman Rheaume said he understood why the neighbors were defensive about traffic because it was a tough situation to be butted up against Spaulding Turnpike, which created a desire to use Farm Lane as entry and exit points onto the turnpike. He said that, out of many options of what could go on the site, the actual intensity of what was asked for in terms of a car dealership was minimal. He said he thought it was a decent proposal compared to others, even though the relief was a high percentage, because the applicant was doing something other than conventional auto sales. He said the Ordinance was never thought of in terms of that small approach. In terms of acres, he said the concept was far different in the Ordinance than what was being applied for. He said the buffer from the power lines was beneficial as well.

The Board discussed stipulating that there be no test drives done on Farm Lane. Chairman Rheaume said the Planning Department would have to enforce it. Vice-Chair LeMay said it wouldn't be a big burden on the dealer to do that. Mr. Parrott said he could support that and also the stipulation that there be no more than 12 pickup trucks for sale at any one time on the property. He said he understood the neighborhood's concerns but said it was a relatively low-use application for that particular property, given the location on Spaulding Turnpike and the easy access to it. He said it would get a few nonconforming properties off the property and that the traffic flow would not be substantially different either up or down from what was currently there. He said a lot of things depended on how many trips were generated out of a residential district because some people worked at home or commuted. He said there were so many possible variables in that area that it was hard to predict, and that one could look at studies all day long but when they were applied to a particular application, they may have no relationship to the actual thing happening

on the ground. He said he thought that the business, by its nature of having 12 vehicles for sale and inspection, would have a very low impact in terms of vehicle traffic and that on balance would be a positive for the neighborhood. He said at most that it would have a neutral effect on the neighborhood.

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

Mr. Lee stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. It would not alter the essential character of the neighborhood. He said the operation would be 300 feet away from the neighborhood and would pose no threat to the public's health, safety or welfare or the public's rights. Granting the variances would do substantial justice, and the value of surrounding properties would not be diminished because they were 300 feet away. He said the power lines were a bigger impediment to resales of house than a business 300 feet away. Regarding the unnecessary hardship, Mr. Lee said the special conditions of the property distinguished it from others and that the property couldn't be used in strict conformance with the Ordinance without variances.

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

Mr. Lee then suggested a stipulation that there be a maximum of 50 new vehicles stored there at any one time and a maximum of 12 pickup trucks for sale. Mr. Parrott agreed.

Vice-Chair LeMay suggested a stipulation that no car carriers be in the parking lot. Mr. Parrott agreed.

The final motion was:

*Mr. Lee moved to **grant** the variances for the application as presented, with the following stipulations:*

- *That there be a maximum of 50 new vehicles stored at any one time and a maximum of 12 pickup trucks for sale; and*
- *That no car carriers be in the parking lot.*

Mr. Parrott seconded the motion.

Chairman Rheume said that, as far as the hardship criteria, it was a general business nominally abutted up against a residential district, and he felt that the effect of the power line easement and its distance from a true residential neighborhood was something greater. He said the other item was the concept of the variance for a one acre lot and a two acre lot and a full dealership with lots of vehicles going in and out. He said the other applicant was a full dealership with lots of vehicles, but the applicant's situation was different and more appropriate for the size of the lot.

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

IV. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 9:45 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary

