

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

7:00 P.M.

JANUARY 17, 2017

MEMBERS PRESENT: Chairman David Rheame, Arthur Parrott, Jeremiah Johnson, Chris Mulligan, Patrick Moretti, Jim Lee, Peter McDonell, John Formella

MEMBERS EXCUSED: Vice-Chairman Charles LeMay

ALSO PRESENT: Jane Ferrini, Planning Department

I. APPROVAL OF MINUTES

A) November 22, 2016

*It was moved, seconded, and **passed** unanimously (7-0) to approve the November 22, 2016 minutes as amended.*

B) December 20, 2016

*It was moved, seconded, and **passed** unanimously (7-0) to approve the December 20, 2016 minutes as amended.*

II. PUBLIC HEARINGS – NEW BUSINESS

1) Case #1-1

Petitioners: Timothy P. Lieto and Maureen M. Lieto

Property: 27 Baycliff Road

Assessor Plan 207, Lot 49

Zoning District: Single Residence B

Description: Reconstruct single-family home with attached garage.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including Variances from Section 10.521 to allow the following:

1. A lot area of 7,749 s.f. where 15,000 s.f. is required;

2. A lot area per dwelling unit of 7,749 s.f. where 15,000 s.f. is required;
3. Continuous street frontage of 60' where 100' is required; and
4. Building coverage of 21% where 20% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The architect Aimee Bentley on behalf of the owners was present to speak to the petition. She introduced the owners, Tim and Maureen Lieto. Mr. Lieto briefly that the house needed major renovations and that the proposed design would conform to the neighborhood.

Ms. Bentley stated that the lot was nonconforming in lot area and frontage. She reviewed the existing and proposed footprints. She stated that the front bump-out was 14 feet from the street and that the house would be pulled back 18 feet to conform to the neighbors' homes.

Ms. Bentley reviewed the proposed design. She said the two-story house would have a lower roofline so that it would fit in with the character of the neighborhood and would also have dormers to reduce the massing. She reviewed the five criteria and said they would be met.

Mr. Moretti asked whether there would be a new deck. Ms. Bentley said they planned to replace the deck with a small stone patio at grade level.

Mr. Mulligan asked how many square feet of living area was proposed. Ms. Bentley said they were proposing 2500 square feet and pointed out that the first-floor footprint was slightly over the existing footprint.

Chairman Rheume asked whether the extra 1% lot coverage could be dropped. Ms. Bentley said they needed it because the lot was small and tight. She noted that it also included the chimney mass and the kitchen bay window.

In response to a question from Mr. Mulligan, Ms. Bentley stated that the property was one lot away from the Historic District.

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

Mr. Parrott stated that the application was straightforward and that it was essentially a replacement in kind in terms of overall size. He said the new house struck him as very

appropriate because of how similar all the other houses on the street were in size, style, and lot placement. He said the proposed house looked perfectly suited to fit right into the neighborhood and felt that what was being requested was minimal.

Mr. Parrott stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the spirit of the Ordinance, if expressed by what the houses in the neighborhood looked like, would be met because the house would fit in nicely with the neighborhood. Granting the variances would do substantial justice because there was no overriding public interest that would argue that the design should be disapproved or modified in any fashion. He stated that granting the variances would not diminish the value of surrounding properties because the neighboring homes were similar to the proposed structure in style, size and placement. He noted that the existing structure looked like it had been somewhat neglected and the other properties did not, so the new structure would fit in nicely and be a welcome upgrade to the neighborhood. Mr. Parrott stated that the special condition was the fact that the structure was a reasonably-sized house but was on a small lot by current standards. He said the other lots in the area closest to the applicant's property were the same size, and the ones further away were a little larger, and he felt that the lot would accommodate the new structure nicely. He stated that the application met all the criteria.

Mr. Moretti said he concurred with Mr. Parrott and felt that the architect and homeowner worked diligently to conform to the property dimensions as closely as possible. He said that the 1% request of coverage was very minimal, noting that the applicant would bring a nonconforming property with side and front setbacks within conformance.

The motion passed with all in favor, 7-0.

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- 2) Case 1-2
 Petitioners: 406 Highway 1 Bypass, LLC, owner, Primary Brewing Company, LLC, applicant
 Property: 406 Route One By-Pass
 Assessor Plan 172, Lot 2
 Zoning District: Gateway
 Description: A restaurant with a 250-500 occupant load and related parking.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use #9.43 to allow a restaurant use with an occupant load of 250 to 500 in a district where the use is only allowed by Special Exception.

SPEAKING IN FAVOR OF THE PETITION

Attorney Steve Patterson was present to speak to the petition. He stated that he was general counsel to Anthony DiLorenzo and Key Auto Group and was representing 406 Highway 1 Bypass LLC and the Primary Brewing Company.

Attorney Patterson said his client wanted to build a two-story restaurant with a mezzanine level, a seasonal roof deck, and a brewery operation in the back. He noted that they had site plan approval. He reviewed the site plan, noting the square footage for the brewery operation and the reduction in the building's total width by 10 feet. He also said that an additional row of parking would be added as well as more green space on the lot.

Attorney Patterson stated that the new allocation of floor space put them into the 250-500 level of occupancy based on the building code formulas, which required the special exception. He reviewed the criteria for special exception and said they were met.

Mr. Johnson asked what the expected access to the site would be if traveling southbound from the rotary. Attorney Patterson said that a driver would need to make a left turn at the light to the left of the Frank Jones Building and travel back around to the property. He added that the owner of the Frank Jones Building would have to consent.

Mr. McDonell asked whether the applicant received consent from the neighbors or if there was an easement. Attorney Patterson said no but thought it was planned to do so. In the worst-case scenario, he said the only legal access would be northbound on Route One.

Chairman Rheume asked whether the applicant planned to place some type of signage indicating the potential way to get to the brewery, and Attorney Patterson agreed.

Mr. Parrott asked whether the design process was far enough along that the applicant was unlikely to need any variances. Attorney Patterson agreed.

Chairman Rheume verified that the applicant's previous petition did not require variances.

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

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

DECISION OF THE BOARD

*Mr. Johnson moved to **grant** the Certificate of Approval for the application as presented, and Mr. Parrott seconded.*

Mr. Johnson said it was a reasonable request and that he would be happy to see something new at that location site to activate it. He noted that some of the abutters complained about the potential for northbound vs. southbound traffic that would bring a certain amount of people to the site. Another concern was that a restaurant tended to bring more transient people to the area who would have trouble figuring out how to get to the site, but felt that it would be an issue for any use on that site. Mr. Johnson said there were already attributes to the site that lent themselves to the use and thought it was nice to repurpose the site without having to lay down asphalt.

Mr. Johnson stated that the standards as provided by the Ordinance were permitted by special exception. He said that granting the special exception would pose no hazard to the public or adjacent properties by such things as potential fire, explosion or release of toxic materials. He said that the brewing process involved some level of chemicals but nothing out of the ordinary, and he noted that there were plenty of rules and regulations in place. He pointed out that there was a reasonable buffer between any abutter. Mr. Johnson said that granting the special exception would pose no detriment to property values in the vicinity or change the essential characteristics. Although there were certain odors and level of commercial traffic due to the brewery, he said that the area lent itself well to that type of use. He said that the Route One corridor had a variety of uses in that particular area and he didn't think a small brew pub with a moderately-sized restaurant would be out of character. He said there might not be anything in the immediate vicinity that was similar to the brewery but thought it could fit into the area and help activate it by giving people a reason to go to that particular site.

Mr. Johnson stated that there would be no creation of a traffic safety hazard. He acknowledged that the traffic would increase because the lot was currently vacant and the brew pub would generate more traffic than the previous car lot, but he felt that it would not be detrimental. He said he wasn't in a position to assume that people wouldn't follow the law, and he noted that there was a legal u-turn. He hoped the applicant would work out an agreement with the abutter because the stoplight would seem underutilized for that side of the intersection and he felt that it was an appropriate way to get to the site. He said granting the special exception would pose no excessive demand on municipal services, because although the brewing portion had a particular load on municipal services, he felt there was no evidence that the City's Utilities Department couldn't handle it. Mr. Johnson said there would be no significant stormwater runoff because the applicant wasn't adding any hardscape and he assumed that the applicant would keep the runoff at a neutral balance or reduce it slightly.

Mr. Parrott said he concurred with Mr. Johnson and had nothing to add.

*The motion **passed** with all in favor, 7-0.*

III. ADJOURNMENT

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 7:43 p.m.*

Respectfully submitted,

Joann Breault
BOA Recording Secretary