CITY OF BEAUFORT
ZONING BOARD OF APPEALS
1911 BOUNDARY STREET
BEAUFORT, SOUTH CAROLINA 29902
(843) 525-7011

MINUTES
CITY OF BEAUFORT
ZONING BOARD OF APPEALS
Monday, March 28, 2011 5:30 pm
City Council Chambers – 1911 Boundary Street
Beaufort, South Carolina

STATEMENT OF MEDIA NOTIFICATION: In accordance with the South Carolina Code of Laws, 1976, Section 30-4-80(d) as amended, all local media were duly notified of the time, date, place, and agenda of this meeting.

Members Present
Brad Hill, Vice-Chairman
Eric Powell
Rod Mattingly
Joan Sedlacek

Members Absent
Alice Howard, Chairman

Staff Present
Libby Anderson, City of Beaufort Planning Director

CALL TO ORDER
Vice-Chairman Hill called the meeting to order at 5:30 pm. He introduced the board members: Eric Powell, Rod Mattingly, and Joan Sedlacek, and City of Beaufort staff, Libby Anderson, Planning Director, and Gail Westerfield, Recorder.

FREEDOM OF INFORMATION ACT COMPLIANCE
Public notification of the Zoning Board of appeals meeting has been published in compliance with the *Freedom of Information Act* requirements and the *City of Beaufort Unified Development Ordinance* (UDO).

Mr. Hill read aloud the UDO as it pertains to the ZBOA and the six points of consideration the board uses.

REVIEW OF PROJECTS

744 Ribaut Road, identified as District 120, Tax Map 3, Parcel 620. Rear Setback Variance.
Applicant: Eric and Annie Powell (ZB11-02)
The applicant is requesting a rear setback variance in order to build an addition to an existing single-family dwelling.
Ms. Anderson said Mr. Powell was recused from the board for this application. The application was tabled at the last ZBOA meeting. Ms. Anderson reviewed the particulars of the application and details of the variance. She said Mr. Powell had brought forth additional information on other options as the board had directed.

Mr. Powell said they looked at the structural integrity of the existing house to see if they could build "up." They found the foundations and footings are inadequate to support a load of that magnitude, so this is not a feasible option. They looked at trying to tie the existing garage into the house but there are elevation issues with this.

Architect **Michael Frederick** said the request was for an additional bedroom and increased master bedroom size. They would still need a garage and building that would cause the loss of one of the existing bedrooms. "It would be tough to make the roof look good," he said. The additional 10' and a hip roof would minimize the impact for the neighbor to the west with no mass overhanging. The additional bedroom would still be small and adding that to a hip roof instead of a gable would reduce the mass of the structure.

There was no public comment.

Mr. Mattingly said there had been discussion of the possibility of changing the small bedroom to be the same square footage. Mr. Frederick said if they went 8' instead, they would have a 7'6" bedroom, "which is more of a closet…If you go off 10' you get a 9'6" bedroom, which is the minimum they'd feel comfortable with," he said. The house was built in 1940, the garage in 2005 or 2006.

Ms. Sedlacek said the lot was subdivided in 1985 and no one has ever built on the lot to the west. She asked how long the subdivided lot had been for sale, and Mr. Powell said since 2005 and he's tried to purchase it twice without success. Ms. Sedlacek said the other lot looks like a close square footage to Mr. Powell's and he said yes, it is.

Ms. Sedlacek said she is bothered that two garages were permitted two months ago in another case before the ZBOA, on the grounds that if the lot were subdivided, it would be approved, and Mr. Powell's case is reverse of that one. They subdivided and didn't leave him enough room to add on. It's non-conforming, but she doesn't feel the amount of the request is unreasonable. A second story would tower over other properties. She is in support of the variance. She doesn't think adding 300 square feet to a 1500 square foot house is unreasonable.

Mr. Hill said the tree on the subdivided lot is historic and can't be cut down. Mr. Powell has done what the board asked him to and the fact that the property adjacent to the rear will have to build on the other side of the historic tree creates enough of a buffer, he feels.

Motion: Ms. Sedlacek made a motion, seconded by Mr. Mattingly, to approve the rear yard setback variance as requested with the addition of a gabled roof as opposed to a hip roof. The motion passed unanimously.

Ms. Anderson and the board reviewed the criteria of the ordinance in application to this case to ensure it met those criteria.

<u>1190 Ribaut Road, identified as District 120, Tax Map 7, Parcel 634.</u> Special Exception.
Applicant: Tom Michaels of Architectonic for PAA of Beaufort, LLC (ZB11-04)
The applicant is requesting a special exception in order to open a convenience store with gas pumps.

Ms. Anderson said the property is on the corner of Ribaut Road and First Blvd. It's about .6 acres and is zoned General Commercial District. The site was built originally for a gas station/convenience store, and was most recently used as a deli/bakery. They would like to have a convenience store with no additions; 3 pump stations will be put more or less where they were when it was originally developed. A canopy will cover the pumps. Fuel sales are approved via special exception. The Design Review Board (DRB) will review the canopy and exterior changes to the building and the applicant will appear before it in April. The new design standards for fuel stations will be applied to this specific use.

Staff would like the applicant to clarify the business's hours of operation. The public hearing notices have been made and there have been no public comments in advance of the meeting.

1. *Is the proposed use compatible with existing uses in the area?* Ms. Anderson said the Shell station is across the street. It is near a strip center and the bowling alley. To the rear of it is residential use. Across Ribaut from it is the Spanish Point subdivision with a green buffer.

2. *Is the site plan harmonious with the character of the area?* There are no canopy design details, but the DRB must approve those changes to signs, lights, etc. and ensure they conform to the November 2010 standards.
3. *What is the impact on infrastructure?* The city's UDO requires uses that will generate 50 trips a day to provide a traffic impact analysis, and this meets that threshold. This has not been seen yet and is an important consideration to this application. There are safety issues relating to curb cuts, etc.
4. *Is proposed use and design in general conformity with the comp plan?* Staff believes that finding could be made. It's designated for Neighborhood Mixed use, and staff feels that's consistent with this proposed use.
5. *What is the impact on public health and safety?* Guidance will be provided with the traffic impact analysis.
6. *What is the potential impact of noise, lights, fumes, etc.?* There will need to be a privacy fence or wall along the rear property line. Staff feels that could be accomplished in the design review process.

Staff recommends that the project be tabled until the traffic impact analysis is submitted and reviewed by the Technical Review Committee. Ms. Anderson went on to explain more about the curb cuts on Ribaut Road and First Blvd.

Tom Michaels is the architect on the project. He said the store hours would be 6 am – 10 pm. They have a proposal to do a traffic analysis, he said, but unless they receive approval for a gas station use, they "won't spend the money on a traffic impact analysis." If it's just going to be a convenience store and not a gas station, there would be no need for a traffic impact analysis. Mr. Michaels showed sketches of the proposed canopy. He said they "want to do the right thing with a traffic study."

Steve Wimberly owns the Shell gas station that is across the street from this proposed site. Three years ago, he said he wanted to upgrade and requested a special exception from the ZBOA to pull the convenience store to the back of the property where a car wash is currently and build a new store. The city told them the building needed to be up by the street and the pumps in the back, which didn't work with their plans, so they applied for a special exception and were denied. He feels like allowing this applicant to do that would be to not comply with the ordinance that he had to comply with at his facility. Mr. Wimberly said this station's owner, **Patel**, will be allowed to have gas pumps up front, which is what Mr. Wimberly wanted to do. He was told he would have to bulldoze the whole place – which was too expensive for him to do – and put the store in front and pumps in back.

Mr. Mattingly noted that the applicant is using an existing building. Mr. Wimberly said "there's not much difference between that," but the applicant would be allowed to put their pumps up front. Mr. Powell asked when Mr. Wimberly's application was, and Mr. Wimberly said approximately three years ago. Ms. Anderson explained that the ordinance has been changed, and now there is not "an absolute number of pumps like there were at the time." Mr. Wimberly's request was for 2 additional pumps, and that is why the request was denied. For

new construction, they still want pumps to be to the side or rear of the development. This site is not new construction; the applicant will have to put a low wall around the two edges surrounding the street to create a sense of enclosure to address this kind of situation.

Mr. Wimberly said his first request for additional pumps was denied. They made a special exception request to pull the store out, build a new one behind the canopy, and landscape the site to block the view, but they were told they had to put the store up by Ribaut Road and pumps in back. Ms. Anderson said there currently is no limit on number of pumps anywhere in the city. On Ribaut Road, there is a special exception process, though. Ms. Anderson reviewed the ordinance as it applied to both the existing and proposed developments. There was no further public comment.

Mr. Mattingly said it seems to be a good opportunity, but curb cuts are a concern. It's "a tough street," and the traffic does move, so he's unsure how they could move forward without a traffic impact analysis. Mr. Michaels said that would be handled by the DRB. They don't want to spend money on a traffic impact analysis if they can't build a gas station. Even if the ZBOA gave the special exception, they still have to go to the DRB.

Ms. Sedlacek asked Mr. Patel why he wants to build a gas station across from another gas station when "there are already so many gas stations on Ribaut Road." Mr. Patel replied, "The answer is to make money." Ms. Sedlacek said there's a residential neighborhood on both sides, and it's a dangerous intersection, especially for pedestrians. Mr. Patel said the people currently parking in the lot are doing so as overflow from the landowner and tenants next door to it. Ms. Sedlacek asked if this is an existing use; its last use was a restaurant and it was a gas station before that, but she wondered if it shouldn't be considered new building. Mr. Michaels said the ordinance does allow what they are trying to do.

Mr. Hill asked, when they discuss demolishing a building and rebuilding, if there's a point where cost and percentage "kick in the ordinance." Ms. Anderson said yes, at 75%. If it's non-conforming, and they put in a certain amount of improvement, they can't go above 75% without having to comply with the ordinance. Mr. Hill said the building exists, needs up-fitting and new tanks, pumps, etc. He asked if they are at 75% in that regard, because if so, they have to meet the letter of the law instead of just retro-fitting an old gas station into a new gas station. Mr. Patel said he thinks that 75% threshold applies to the building, not the site development. Ms. Anderson said the ordinance does say "building," so it's probably OK. Ms. Anderson said the pumps and canopy etc. are part of the site, not the building.

Mr. Powell said it was a gas station, now it's a deli. He wondered, if it had never been a gas station, if this project would even be considered. He feels like Mr. Wimberly's existing business is "being punished." It's not currently a gas station, so he has concern with the special exception review criteria. Mr. Patel said the old pumps were removed in September 2003. He said there was a deadline threshold for impact fees. Ms. Anderson said it was January of 2003, she thought, but she would have to check. Mr. Patel said since it was still a gas station, the

impact fees wouldn't apply since it was still a gas station after January 1. He asked if they would apply then, since it's really not new development by that standard.

If it's denied, Mr. Hill said, they would be unable to apply for a year. Ms. Anderson said a major question is whether this is new development. Mr. Mattingly said that's one of them, including the traffic impact analysis, and if they made a recommendation in favor, there would be many stipulations.

Ms. Anderson said her personal feeling is that this is redevelopment, not new development. It's not a tear down; it's a reutilization of an existing brown field site. She said impact fees are a separate issue. She feels the traffic impact analysis is necessary for decisions, but they could give tentative approval with final approval contingent on the traffic impact analysis. Ms. Sedlacek said redevelopment converted it, and it's not a gas station anymore. Mr. Michaels said even if it were new development, until they get an approval for a gas station, they "are caught in these issues." They might say pumps don't meet the design, but until they get that approval, they can't go forward. They're asking for approval of the use of the gas station, and then they'll go through the other issues like privacy fence, etc., which are handled by the DRB. Mr. Mattingly said safety issues are part of the ZBOA's purview, and the curb cuts are not adequate. Mr. Michaels said the SCDOT will handle that; it's not the applicant's decision to make. Until they get the use approved, they're "stuck."

The DRB will dictate how it looks, ingress/egress, etc., Mr. Michaels said. The ZBOA needs to decide if this is new construction or rehab of an old gas station, and whether they allow the approval of the special exception. Mr. Mattingly said the board should go back to the 6 requirements, and if they meet them, they can move forward or not.

1. *Is the proposed use comparable with existing and uses in the area?* Yes, there's a gas station across the street.
2. *Is the site plan harmonious with the character of the area?* This will be determined by the DRB, Mr. Powell said. Ms. Anderson said "the ZBOA has the teeth to say what will happen." The DOT may be the weakest link in the system, and they may look to the city for what to do. The ZBOA has the most purview in this. Ms. Sedlacek said if they can build a gas station there, they should have to go with the pumps in back and building in front. Mr. Hill said that's not what the ZBOA is reviewing here; how it's designed is not up to the ZBOA.
3. *What is the likely impact on infrastructure?* Mr. Mattingly said he'd want to be very specific in a proposal on curb cuts. They can make the recommendation the way they want to see it. The left hand turn is a big issue. Mr. Mattingly said the volume of traffic is also a big issue; turning in is a safety issue. Mr. Hill said they would all feel better about making a decision with a traffic impact analysis. To make a more informed decision on whether to approve or not, he would feel better with a traffic study.
4. *Is the proposed use and design in general conformity with the comp plan?* It generally is, Ms. Anderson said.

5. *What is the impact on public health and safety?* Mr. Powell said this goes back to the traffic impact analysis.
6. *What is the potential impact of dust, smoke, lights, fumes, etc.?* They have agreed to do their best to remediate this.

Mr. Hill said the sticking points are items 3 and 5. Mr. Michaels responded that this was once a gas station, and he's concerned that a traffic impact analysis will be done and determine that the impact is fine, and then the ZBOA may say it's not going to approve it. Ms. Sedlacek said she feels that's a fallacious argument and referred to the earlier case of Mr. Powell, noting that he, too, "had to do things to jump through hoops" before his case was approved. Traffic is greater than it was when the other gas station was there, and someone needs to determine whether it will work, she added.

Mr. Mattingly said for the last two weeks, there has been a recommendation from staff to have a traffic study, and it hasn't yet been done. Mr. Michaels said he didn't think they needed to, since they have to go to DRB, and he said they didn't expedite it for the ZBOA because they weren't told to in the pre-application conference. Mr. Mattingly said if it's tabled, it won't cost time unless they decide they don't have to go to the DRB. Mr. Patel said if they get conditional exception and a traffic impact analysis is done, the DRB will get all that information as well. He went on to cite the curb cuts for the existing Shell station. Mr. Hill said he believed some of those businesses were grandfathered in.

Motion: Ms. Sedlacek made a motion, seconded by Mr. Mattingly, to table the application until after the traffic impact study is obtained. The motion passed unanimously.

<u>Riverpointe at Live Oaks (23 Parcels), identified as District 120, Tax Map 29, Parcels 412-434.</u>
Variance Appeal.
Applicant: D.R. Horton, Inc. for South Coast Multifamily Townhomes, LLC (ZB11-05)
The applicant is appealing the decision of the Zoning Administrator denying applications for new construction due to the garage design.

Ms. Anderson said the reasons for the denial are outlined in the letter to John Bender which the board was given copies of. The variance conditions or special exception criteria do not apply. Ms. Anderson explained that the appeal is "settling a disagreement."

In January, the applicants' application was denied for 6 properties, based on the design of the garage. The garage can't be placed on the front with a couple exceptions, according to the ordinance. January 17, 2011, a letter was sent requesting a review of the Riverpointe house designs. Staff feels this provision of the ordinance applies to attached and detached garages. Ms. Anderson cited paragraph 3, which says that the height requirement "applies to detached garages."

Ms. Anderson said the applicant stated that a “Franklin” model type complies with the design standards because it has a bonus room, creating habitable space above the garage. Staff “feels a garage is a garage,” whether there’s a bonus room or not. If that mitigated it, that language could have been added in the ordinance.

Another type of floor plan has been proposed, “The Berkeley.” A front porch lined up with the garage would, the applicant feels, make it in line with design standards, and comply with the ordinance. Staff feels that doesn't mitigate the project garage situation, Ms. Anderson said. The façade of the building determines that, not the front porch. The urban design standards guide supports this position.

The required public notice was done. Ms. Anderson said staff is asking the ZBOA to support its interpretation of the ordinance as it applies to the applicant’s site plans. Mr. Powell said the key question seems to be what determines the front of the dwelling.

Attorney **Andrew Colvin** said they’re trying to determine what the front line of the building is. The front façade is the front line, according to staff, but that’s not what he sees in the ordinance and that’s why there’s an appeal. Mr. Colvin said they disagree with the staff report’s key phrase: that the front façade, not the porch, determines the dwelling’s front line. They think there are two reasonable interpretations: the front line is where construction begins or where habitable space begins, which they think includes a bonus room. They don’t think “where the façade begins is a reasonable interpretation.”

Mr. Colvin discussed the “plain meaning rule,” and presented material as to how to interpret a statute, such as, “there should be an assumption that a statute means what it says and says what it means.” He thinks “façade” was a word put in there that they don’t agree with.

He presented other exhibits to the board. When an ordinance is drafted, it’s supposed to be internally consistent, he said. “Front line” is used 3 times, he said. 1 time it doesn't apply, and then there are two sections which use it. One is the provision they are being asked to interpret and another that applies to sheds not being in front of the front line. He did a word search for “façade” and found it used 52 times. He thinks it’s clear that if the intent was for façade to be the front, that’s what they could have used. He said “the ZBOA is meant to look at the plain meaning.”

Mr. Colvin said the façade can be the front line of the dwelling, but they’re saying it’s not always. **John Binder** said the chosen language didn’t use a defined term line, “façade,” and “the front line” is ambiguous. There’s “no question a façade is definite and clear,” he added. Mr. Mattingly said there’s clearly word-smithing used to satisfy this appeal. Mr. Colvin said the frontline could include the porch, but they feel it could include the garage with a bonus room above it.

Mr. Hill asked if they had units without a bonus room above the garage. They said yes. Mr. Hill said then they can't say the bottom part of the garage is habitable, so it's forward of the overall façade of the house. Mr. Colvin said they're asking the ZBOA to determine what the front line of the dwelling is. Mr. Hill said front line was meant to be at the face of the house, not the garage. The intent of the ordinance is to not have the garage forward of the house. Mr. Mattingly said that makes sense, and he's concerned that they "have to make the decision irrespective of this particular use ruling." Mr. Powell said the porch can't be over a setback line: "If the front porch is beyond the living space, isn't that the front line of the house?" He said it's an interpretation. Mr. Caldman said this could be a situation where they know what they want, but the ordinance may not say that. This "may be a time to tighten up the ordinance," he added. Ms. Sedlacek said maybe the ordinance should say the garage can't extend more than "X" feet in front of the house.

Mr. Binder said this is not a discussion of front-loading. The garage will be seen. Ms. Anderson said in regard to the front-loaded garage, there are many ranch homes from the 1960s and 1970s in the Mossy Oaks area that are flush with the front line of the building. As to which comes first, the appeal or the variance, this appeal could be tabled and the variance heard. There was general discussion about this option.

Ms. Sedlacek feels the ordinance means that the garage shouldn't extend in front of the house. These that D.R. Horton is showing, she said, are more attractive in these instances, but once that's allowed, then people will want garages "which are more and more in front of the house."

Mr. Mattingly said he was in favor of tabling it and going on to the variance, making a determination for a specific neighborhood in a specific time, rather than the whole city of Beaufort.

Mr. Binder said there are multiple plans where the garage is flush with the upstairs room; some are even, some are 4' or 5'. The garage-out-front model has been taken off the table as they understand that it doesn't apply. Mr. Mattingly said they could stipulate that no home's garage could extend more than "X" feet. Mr. Powell said the intent of the code seems clear to everyone.

Mr. Mattingly made a motion, second by Mr. Powell, to table the request for appeal temporarily until the decision on the subsequent variance application. The motion passed unanimously.

<u>Riverpointe at Live Oaks (23 Parcels), identified as District 120, Tax Map 29, Parcels 412-434.</u>
Front Yard Setback Variances.
Applicant: D.R. Horton, Inc. for South Coast Multifamily Townhomes, LLC (ZB11-06)
The applicant is requesting front yard setback variances in order to have the garages extend past the front line of the dwellings.

Ms. Anderson reviewed the six findings for a variance that must be met. Staff has looked at the ordinance and the conditions for garages, she said. The applicant's pre-designed homes have many that project beyond the frontline of the dwelling.

Public hearing notices were made and there were no public comments on the application.

Regarding the six requirements:

1. Staff feels the finding could be made for exceptional conditions.
2. Conditions don't generally apply to other properties in the city.
3. Conditions aren't a result of the applicant's own actions.
4. Granting the variances will not be in conflict with the comp plan.
5. The board must make a decision as to whether the application of the ordinance is an unreasonable restriction on the use of the property. Garages "are not really a traditional form of construction in Beaufort," Ms. Anderson said.
6. Staff believes that granting the variances would not be a substantial detriment to adjacent property and the public good.

Staff recommends that if the board can make all findings necessary to approve the application, staff would recommend approval, perhaps with conditions on the flexibility of design of the garage. Ms. Sedlacek asked Ms. Anderson if her decision on what a front line might be had changed, and Ms. Anderson said no.

Mr. Colvin responded to the questions of staff and responded to the conditions for a variance. He said there is an architectural review board. The infrastructure is there for town homes and the lot is clear cut. Horton owns half the lots and has contracts for the rest. There will be an architectural review board and covenants on the property, etc. There was some discussion as to who was carrying the costs until sales are made. Mr. Colvin said its all part of one development plan. Horton has other garage plans, but because these were townhome lots and were narrow, the other designs with garages with side entrance, etc., won't work here in this development. There's a drainage ditch and there's no way to put an "alley" between. Mr. Binder said in another development, they are able to do that, but these lots are "tight." Mr. Binder said there are 7 total designs that could meet the city's current standards for garage design.

Mr. Colvin said on findings 2, 3, 4 and 6 they agree with the staff, but in regard to #1, extraordinary and exceptional conditions, they feel that they are there: the 25' drainage easement combined with the depth restrictions of these lots and that the infrastructure was put in for townhomes creates some exceptions. DR Horton is trying to reclaim an abandoned development, Mr. Colvin said: "This is a distressed development, and they are trying to bring it back."

In regard to finding #5, as to whether it is an unreasonable restriction on the utilization of the property, again, it is a distressed development, Mr. Colvin said, and the variance is for the more popular models that appeal and fit on the scale of a good portfolio of homes to buyers. These

plans can't be used if this variance is denied, and they already have hardships and restrictions. Side load garages are out of the question, he said.

Mr. Mattingly asked why the 6 corner lots wouldn't be eligible for side loads. Mr. Binder said the corner lots could potentially have a side load and there should be plans that could fit that. He found at least 4 side load plans in his model book. There was general discussion of this idea. Mr. Mattingly said if they could move forward, could they stipulate that if the garage is in front of the front line that it could not extend more than "x" number of feet. Mr. Binder said they wouldn't be able to change plans, but they can limit options.

Ms. Anderson asked Mr. Binder about the plans she reviewed: What was the maximum projection, not including the porch? Mr. Binder said with the model "The Mackenzie," the garage sits halfway in front of the house, and that's about 12', but most are about 8'. However with the Mackenzie, he believes he could do a side load option.

Mr. Binder said the majority of the plans have been accepted. The 5 that aren't are under discussion. The average extension in front is about 6'. Mr. Powell said if someone were to make a suggestion, he wants "to ensure it's enough."

Mr. Hill asked if the issue goes away if there's side loading. Ms. Anderson said yes; there is a drawing that shows that if a garage is side loaded and has windows, they allow that to project in front. Mr. Hill said it seems to him that they are using a standard cooker cutter floor plan on a property that was platted for townhomes. He asked why they haven't considered getting fewer units but all side loaded garages. Mr. Binder said the numbers all have to work. They have to hit a price point that will sell.

Mr. Hill asked Ms. Anderson if the development could be submitted as a PUD. Ms. Anderson said it would have to be rezoned. Mr. Binder said they haven't considered this. They submitted in December for permits and are trying to get started.

Ms. Sedlacek asked the square footage of the houses; Mr. Binder said 1250 square feet to 2850 square feet with lots of about 4000 square feet.

Mr. Hill said his concern is that approving this sets a precedent. Also, if they approve it, there's no guarantee that the other half of the development will be developed in the same fashion. Ms. Anderson said any variance runs with the land, not with the owner. Mr. Mattingly said it's a unique property and may not fit the normal model. If stipulations are put in to limit garage depth, and there are side load garages considered, he could support it. Ms. Anderson said if the side load garages project further, the amount of projection allowed could be more flexible.

Mr. Mattingly made a motion, seconded by Mr. Powell, that the variance be approved with the stipulation that no garage extends more than 6' from the main living area of the house on

the first floor. The objective is for the builder to strongly encourage side load garages on any lot where it is possible.

Mr. Mattingly amended his motion to include that the six corner lots would be designated to be side loads. Mr. Powell seconded the amended motion.

Mr. Hill asked if the encouragement for side load if possible could be contingent on review by staff, and Ms. Anderson said she thinks so. Mr. Binder said he'd rather just restrict those six lots to side load.

Mr. Mattingly amended his motion to state that if a model has a side loaded garage, the 6' requirement could be waived. Mr. Powell seconded the amended motion.

Ms. Anderson said they have allowed that in the past on attached garages if they are side loaded. There was a review of the six variance stipulations and staff's assessment of them.

The motion passed unanimously. The appeal was therefore withdrawn.

<u>302 King Street, identified as District R120, Tax Map 4, Parcels 755.</u> Side Yard setback Variances.
Applicant: Beekman Webb for Sam and Ann Bluntzer (ZB11-07)
The applicant is requesting side yard setback variances in order to add side and rear porches.

The property is in the historic district. An 1100 square foot building that is considered to be of historic significance is on the property and is being renovated. The existing structure is non-conforming as it is only 2' from the east side property line and 9' from the west side property line. The applicant is proposing renovation. They are requesting a 4.51' setback variance on the west side for a side porch to be added. The dwelling is non-conforming so there will be an encroachment on the east and west side of the setbacks. They need a 6.4' variance on the east side and a 5' on the west side for the rear porch addition.

No public comments were received.

Regarding the six requirements:

1. Extraordinary conditions are that the structure is non-conforming.
2. Conditions don't generally apply to other properties in the area. This is one of the smallest lots in the neighborhood.
3. Conditions aren't a result of the applicant's own actions.
4. Granting the variances will not be in conflict with the comp plan.
5. Preventing minor porch improvements would be an unreasonable restriction on the use of the property.
6. Staff believes that granting the variances would not be a substantial detriment to adjacent properties.

Beekman Webb said he has spoken to the neighbors on both sides of the applicant's property, and "they don't have a problem with this."

Mr. Mattingly said he thinks "it's a beautiful project." He asked if they had considered moving the porch into an "L" for safety considerations. Mr. Webb said it's not wide enough to give entrance there. Mr. Mattingly asked would it have been possible not to make the porch go all the way to the east; Mr. Webb said it was considered and brought in some on each side, but it's a very small porch already and doesn't infringe on anyone as it is.

Mr. Powell made a motion, seconded by Mr. Mattingly, to approve the plan as submitted with the setbacks for the front and rear porch variances for the reasons outlined in the staff report. The motion was approved unanimously.

Adjournment

There being no further business, Vice-Chairman Hill adjourned the meeting at 8:17 pm.