

**STATE OF RHODE ISLAND CITY OF EAST PROVIDENCE
COUNTY OF PROVIDENCE ZONING BOARD OF REVIEW**

MINUTES

A special meeting of the East Providence Zoning Board of Review was held at 7:00 P.M., on Monday, 28 March 2012, in the City Council Chambers, East Providence City Hall.

The following members were present:

Eugene Saveory – Chairman

Michael Beauparlant – Vice-Chairman

John Braga

Pier-Mari Toledo

Antonio H. Cunha

Richard Croke, Sr. – 1st Alternate

Peter Midgely – 2nd Alternate

Edward Pimentel – Zoning Officer / Clerk

Gina DiCenso – Assistant City Solicitor

Chairman Saveory announces that it is the policy of the Zoning Board of Review to caution all petitioners that they have the right to counsel before the Board and failure to do so at this time does not constitute sufficient grounds for a change in circumstances under the

eighteen-month repetitive petition clause. All petitioners are also cautioned that if the petition is approved, all construction must be done in compliance with the submitted plan(s), application and testimony presented to the Zoning Board of Review. A change of any sought must obtain the requisite approval of the Zoning Board of Review. All work that deviates from the approval will be ordered halted and promptly removed. Comments will be limited to the petition being heard and no comments will be heard that do not pertain to an item scheduled on tonight's docket. He also notes that it is the policy of the Board that no new agenda item will be heard after 10:30 PM.

Chairman Saveory also notes that the Board welcomes any commentary from the public provided it solely pertains to an item on tonight's docket.

A. Swearing in of the Zoning Officer

Chairman Saveory asks Assistant City Solicitor DiCenso to swear in the Zoning Officer, Mr. Pimentel.

II. SEATING OF ALTERNATE MEMBERS

Chairman Saveory informs that the Board has a full compliment of members – All members, inclusive of the Alternates, are present.

III. APPROVAL OF ZONING BOARD MINUTES

Chairman Saveory requests a Motion to approve both the Minutes of 29 February 2012.

Motion by Mr. Cunha to approve the minutes of 29 February 2012.

The motion is Seconded by Ms. Toledo, and Unanimously approved.

IV. Zoning Officer's Report

Zoning Officer informs the Board that there are no report items to be discussed. However, he would like to suggest that the next meeting of the Zoning Board of Review scheduled for 25 April 2012, being rescheduled to 2 May 2012, to provide sufficient time within which to receive an appropriate number of petitioners. Furthermore, there was a recent emergency that necessitated an additional week for the petitioner to furnish the necessary documentation. Moving it forward a week will grant the referenced petitioner the requisite time to supply the necessary submission documents.

Zoning Officer requests that it be made in the form of a motion.

Motion by Mr. Cunha, to reschedule the 25 April 2012, hearing to 2

May 2012. The motion is Seconded by Mr. Braga, and Unanimously approved.

V. CORRESPONDENCE / DISCUSSION

A. Request by Chairman Saveory – Regarding Indemnification.

B. Indemnification Response from Law Department.

Chairman Saveory requests that the subject matter be held over till the end of the agenda. The Board members agree to discuss this matter at the end of the agenda.

VI. STAFF REPORTS

A. Planning Department Staff Report –

Chairman Saveory informs the public that the Planning Department – Staff Report is automatically rendered part of the official record.

VII. CONTINUED BUSINESS

1. Petition No. 6454: Fernando DeCastro, seeks a Dimensional Variance, to permit construction of an accessory garage that exceeds the principal usage of the property, namely single-family residence,

pursuant to Section 19-1 'Definitions' – One-thousand and nine-hundred and sixty-eight (1,968) square foot dimensional variance, resulting in the proposed accessory garage having an approximate building footprint of two-thousand and six-hundred and eighty-eight (2,688) square feet, for property located at 187 Forbes Street, being Map 511, Block 02, Parcel 005.00, and located in a Residential 3 District.

[Subject dimensional petition was continued from 25 January 2012, to permit counsel to submit an Appeals Application – Appealing the decision of the City of East Providence Zoning Officer.]

Fernando DeCastro, 187 Forbes Street, East Providence, RI, subject petitioner, is properly sworn in.

Mr. DeCastro informs the Board that his attorney is not present tonight, and he must therefore seek another continuance. He just recently received within the last two-hours from his attorney's office that he was indisposed due to an emergency.

Chairman Saveory queries the Board, beginning with Mr. Croke, in regard to the request for a continuance.

Mr. Croke notes that the petitioner was given two (2) months, more than adequate time in which to either submit for the appeal, or be prepared to go forward on the dimensional petition. He therefore, recommends not issuing a continuance.

Chairman Saveory asks the Zoning Officer if there has been any communication with petitioner's counsel. Zoning Officer responds he did speak with Attorney Lambert approximately one-month ago, just prior to the deadline submission for the subject appeal, and was informed that he would be submitting shortly. However, no such application was ever furnished. Since then , he has left several messages informing him of tonight's meeting, without response.

Mr. Cunha indicates that he does not have any problem granting one (1) more continuance, however if the petitioner is not prepared to go forward next month, then he would suggest withdrawal with prejudice.

Zoning Officer explains to the petitioner and Board that the subject application is pursuant to a Notice of Violation, and therefore if the petition is either denied or withdrawn with prejudice, meaning that he may not return within eighteen (18) months, he must proceed with the violation process and eventual prosecution.

The Board concurs that the matter must be resolved in one manner or another.

Mr. Midgely inquires as to how the violation notice and subject petition are related. His understanding was that the petitioner is operating an illegal business from the subject premises. Whether the petition is, or is not, approved, should have no bearing on the

violation. Zoning Officer concurs, simply noting that construction of the garage will permit some smaller items to be stored within said structure, albeit the commercial operation and storage of larger items cannot proceed. Mr. Midgely directs his comments to the petitioner, noting that he wants it to be clear that regardless of the outcome of the subject petition, the violation must cease and storage of any commercial related item / vehicle removed from the premises.

Motion by Mr. Cunha, to continue the subject petition to 2 May 2012. The motion is Seconded by Mr. Beauparlant, and Unanimously approved.

Zoning Office informs the petitioner that if he is simply proceeding with the dimensional petition, nothing further need be submitted as the application has been deemed complete. However, should he desire to proceed with the appeal, all materials must be submitted by 6 April 2012, which is half-a-day due to the holiday, and is therefore recommended that it be submitted by 5 April 2012?

VIII. NEW BUSINESS

1. Petition No. 6456: Debra J. Hobday, seeks a Dimensional Variance,

to permit construction of an addition onto a single-family dwelling without complying with the minimum front-yard setback requirement pursuant to Section 19-145 – Four and nine-tenths (4.90) foot variance, referenced addition to be situated approximately fifteen and one-tenth (15.10) feet off of the southerly (front) property boundary, fronting Berwick Street, for property located at 108 Greenwood Avenue, being Map 504, Block 01, Parcel 082.00, and located in a Residential 3 District.

Debra J. Hobday, 108 Greenwood Avenue, East Providence, RI, subject petitioner, is properly sworn in.

Ms. Hobday informs the Board she is simply seeking permission to construct a rather small addition onto her single-family dwelling.

Chairman Saveory queries the Board, beginning with Mr. Beauparlant.

Mr. Beauparlant inquires if the proposed bulkhead will remain in the same location? Ms. Hobday responds that the bulkhead must be relocated in order to accommodate the addition. The bulkhead will be tucked directly behind the proposed addition.

Mr. Beauparlant notes for the record that he has no personal objections. In fact, the presence of two (2) front-yards establishes a greater setback, and resulting deviation. Were there only a singular front-yard, the subject property boundary would be defined as a

side-yard and fully compliant.

Mr. Cunha notes that he concurs with Mr. Beauparlant's conclusion – the relief is necessitated by the presence of two (2) front-yards.

Mr. Midgely notes for the record that he does not have any questions and/or comments at this time.

Mr. Croke notes that it is a corner-lot, and thus the need for dimensional relief.

Ms. Toledo notes that the resulting deviation is quite minor.

Mr. Braga notes that the relief is very small, and therefore no objection.

Chairman Saveory notes for the record that in his personal opinion the addition could ever be enlarged to some minor degree without any concern.

Chairman Saveory then inquires if there is anyone else present who would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Motion by Mr. Beauparlant, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and not due to a physical or economic disability of the applicant excepting those physical disabilities addressed in RIGL 45-24-30(16).

2. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

3. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the city's comprehensive plan upon which this chapter is based.

4. That the relief to be granted is the least relief necessary.

Mr. Beauparlant hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. In granting the dimensional variance, that the hardship that will be

suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience.

Mr. Beauparlant moves that the dimensional variance be Granted subject to the petitioner fulfilling the following conditions:

1. Petitioner(s) obtaining any, and all, necessary permits.
2. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.

Chairman Saveory asks Ms. Hobday if she accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Ms. Hobday responds that she fully understands and accepts the conditions just stipulated.

The motion is Seconded by both Mr. Cunha and Ms. Toledo.

Roll Call Vote:

Mr. Beauparlant - Aye The corresponding hardship results directly from the

presence of two (2) front-yards. The relief sought is quite minor and does not result from any personal prior actions of the subject property owner.

Mr. Cunha - Aye The two-front-yards results in the presence of hardship.

Ms. Toledo - Aye

Mr. Braga - Aye

Chairman Saveory - Aye In addition, to the findings already stated, the placement of the present dwelling is pre-existing.

Dimensional variance unanimously granted, subject to the aforementioned condition(s),

2. Petition No. 6457: Carlos A. and Chantel N. Janiero, seek a Special Use Permit, to increase the overall height of their present access three-stall garage, said garage being accessory to a pre-existing nonconforming three-unit dwelling, thereby being defined as an expansion of an accessory nonconforming land use pursuant to Section 19-413(a) 'Alteration of nonconforming use', for property located at 50 – 52 Ivy Street, being Map 106, Block 06, Parcel 023.00,

and located in a Residential 6 District.

Michael McHugh, 'MCM Design', Code Consultant, Providence, RI, is properly sworn in. Informs the Board that he prepared the submission package, and will therefore be providing the majority of testimony.

Carlos A. Janiero, 50 Ivy Street, East Providence, RI, subject petitioner, is properly sworn in.

Mr. McHugh informs the Board that the petitioner is seeking permission to vertically expand an accessory garage, said garage being physically situated towards the rear of the residence. The subject residence is improved with a three-unit dwelling, an otherwise pre-existing legal nonconforming land use. Therefore, any improvement whatsoever to the property, necessitates the permission of the Zoning Board of Review. The present accessory garage is situated approximately two-feet, at the closest point, to both the northerly and westerly property boundaries. The minimum accessory setback is five-feet. However, this is a non-issue because the proposed improvement is purely vertical. The issue is the nonconforming nature of the subject property. The present garage is a three-car, although in reality, based upon its present configuration, can only accommodate two (2) vehicles with some minor storage. The reason for the expansion is to rectify a rather severe drainage problem situated directly in front of the accessory garage. He has

photographs illustrating the problem in question. The owner has taken measures to cure without success, including attempting to correct an existing on-site drainage system. Water collects and then backs-up into the garage rendering it unusable. His goal is to raise the floor of the garage and area in front of said garage, thereby addressing the water collection problem. In so doing, he must raise the overall garage. The cost of the improvements is such that it only made sense to seek additional height to accommodate much-needed residential storage. The storage is strictly for home and garden implement storage, and not for any other usage. Even so, the height will not exceed 20-feet, the accessory maximum permitted by Ordinance, pursuant to Section 19-144(c). Although, the subject property is somewhat undersized due to the present land usage, approximately only 20% of the properties within the 200-foot radius have a similar or larger lot size, and is therefore quite compatible with the character of the surrounding neighborhood. Furthermore, there are several other properties that have accessory structures so located with close proximity to their respective property boundaries – a condition that likewise appears to be the norm. There is no expansion of the accessory garage, other than vertically. The Planning Department expressed some concern about the visual impact of raising the subject structure. The garage will not be furnished with any openings, other than the associated garage-doors – all remaining sides will be solid in construction. It is his professional opinion that the improvement is quite minor, and will therefore not result in any negative impact on the surrounding

neighborhood.

Chairman Saveory queries the Board, beginning with Mr. Braga.

Mr. Braga inquires if there is any electricity presently furnished to the garage? Mr. McHugh responds in the affirmative.

Mr. Braga inquires if there is presently any plumbing associated with the subject garage, and if not, is any anticipated? Mr. Janiero responds in the negative to both questions.

Mr. Braga inquires if introduction of a full second-floor is anticipated?

Mr. McHugh responds in the negative, noting that no stairwell is proposed, other than a center drop-down stairs/ ladder. The maximum center height will be six-feet, sloping down to the present ridge-line. The new area is clearly for storage, and uninhabitable.

Mr. Braga notes for the record that the improvement does appear to be reasonable. The property is nonconforming and the form of relief sought is by way of a special use permit. However, in order to ensure that there is no negative impact, he will be conditioning approval on there never being any windows installed towards the rear of the structure, unless he hears something different from a proximate neighbor. Mr. McHugh responds that that is quite acceptable.

Mr. Beauparlant notes that he is in agreement with Mr. Braga's comments. Although, he does not anticipate any negative impact,

averting introduction of any opening on the rear side should assist in that endeavor. Mr. McHugh reiterates that no openings are proposed, and the overall height would prohibit any usage, other than basic storage.

Mr. Cunha inquires if the present structure is a three-car garage? Mr. McHugh responds that that is how it is classified by the Tax Assessment Department. However, it is far too small to accommodate three (3) cars. He has photographs that clearly illustrate this point.

Chairman Saveory inquires if the petitioner is proposing to submit the photographs as an exhibit? Mr. McHugh responds in the affirmative, noting that there are seven (7) individual photographs in total. Zoning Officer notes that they will be designated Exhibits 'A1' through 'A7", respectively.

Motion by Mr. Beauparlant to accept the submitted photographs, designated Exhibit's 'A1' through 'A3,' inclusive, and render them full exhibits. The motion is Seconded by Ms. Toledo, and Unanimously approved.

Mr. Cunha notes that the photographs do illustrate three (3) garage doors. Mr. McHugh responds in the affirmative.

Mr. Cunha inquires as to the style of roof? Mr. McHugh responds that

it will be covered with asphalt shingles to match the existing residential roof-line.

Mr. Cunha inquires as to the proposed pitch? Mr. McHugh responds that it is a six-pitch to permit enough headroom for proper storage. They balanced overall height – permitting storage without realizing excessive height. The gutter-line will be at approximately the 15-foot line, and raising to 20-feet at the centerline.

Mr. Cunha notes that a condition of no plumbing fixtures will be imposed. Mr. McHugh responds that that is acceptable. Chairman Saveory acknowledges that he has already documented on his list of stipulations – no water-line or plumbing fixtures.

Zoning Officer also informs the Board that due to the present severe ponding problem, a problem that was brought to the attention of himself and the Building Official by the property owner, he would recommend that any approval be conditioned on review and approval by the City Engineer. A drainage plan should be prepared for the City's Engineer, documenting that no additional run-off or redirection of said run-off, will occur as a result of the subject improvement. This is required by both RI General Law as well as City regulations. Chairman Saveory concurs that that was one of the concerns that he too wanted properly addressed in some manner. Mr. McHugh notes that he has advised the property owner that some form of catch-basin will be required as an aspect of the subject improvements. Although

the present system has failed, he has offered some suggestions. Zoning Officer acknowledges that that may work, however not being an engineer, he must insist that approval by the City Engineer be imperative in any affirmative decision, in order to avoid creating an even greater problem.

Mr. Midgely notes for the record that he does not have any questions and/or comments at this time.

Mr. Croke notes for the record that he does not have any questions and/or comments at this time.

Ms. Toledo notes for the record that he does not have any questions and/or comments at this time.

Chairman Saveory reiterates that drainage was a concern of his as well. Considering the close proximity of residences, redirecting drainage could result in an even greater problem. He then inquires if the present driveway is common to both residences? Mr. Janiero responds in the affirmative.

Chairman Saveory then notes that he had some problems figuring out the measurements because the scale was in error. He then inquires if the overall peak height will be raised by six-feet? Mr. McHugh responds in the affirmative, noting that it may be raised by an addition foot or so but not to exceed twenty-feet overall. If the scale

is off, corrected plans will be submitted for building permit review.

[NOTE: Discussion ensues as to the exact intended construction, with Mr. McHugh acknowledging that the plans are merely draft plans that may need to be further engineered.]

Chairman Saveory notes that he is concerned about raising the height such that it be used for purposes other than storage. Mr. McHugh assures that Board that that is not the intention – merely for storage. Chairman Saveory notes that he is not necessarily questioning the integrity of the subject property owner, but potentially a future owner. Mr. Cunha notes that the overall height of 20-feet will impose limitations on usage.

Chairman Saveory inquires if there is anyone present who would like to speak in favor of the subject petition? Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition.

Lori and John Ritso, 63 Vine Street, East Providence, RI, request permission to speak in regard to the subject petition. Ms. and Mr. Ritso are both properly sworn in.

Ms. Ritso notes that her primary concern is in regard to the severe drainage problem. They reside directly behind the subject petitioner, and every time it rains they get flooded out. They are concerned that

this will exacerbate the problem. They also have a concern about raising the overall garage. The garage is directly on the property boundary and raising it will further block their view. They do not wish to be difficult, understanding the need for storage, but being that both properties are so small, any change could result in negatively impacting said properties. She is also concerned about harming the few trees that remain. She then inquires if the alternate accessory structure belongs to the petitioner? Mr. Janiero responds that it belongs to the adjacent property owner.

Mr. Ritso informs the Board that he is most assured that the subject petitioner has already harmed a tree on his property and does not want any other trees harmed. Chairman Saveory inquires if there is any need to trim any tree back pursuant to the subject improvement? Mr. Janiero responds in the negative.

Mr. Ritso notes that he is simply seeking assurance that the present drainage problem is not exacerbated. Chairman Saveory assures Mr. Ritso that that was why the Zoning Officer recommended a drainage analysis be submitted for review and approval by the City's Engineer.

Mr. Cunha also notes that all sides be maintained in a solid appearance – no windows and/or doors, lest garage doors. Mr. Croke also adds that no windows (skylights) be permitted within the roofline.

Mr. Braga asks for a listing of conditions prior to commencing rendering a motion. Chairman Saveory offers the following list of conditions:

- 1. No water or sewage service shall be permitted.**
- 2. All sides, including the roof, must remain solid, lest introduction of garage doors along the front. Neither doors nor windows, to include skylights, will be permitted on the westerly, northerly, and easterly sides of the subject garage. Only garage doors will be permitted on the southerly (front) side of the garage.**
- 3. The petitioner will be required to submit a drainage plan to the attention of the City of East Providence City Engineer, documenting compliance with all drainage regulations. No additional run-off or redirecting of run-off shall ensue as a result of the subject improvement.**
- 4. The accessory garage shall solely be used for personal residential storage purposes.**

Chairman Saveory then inquires if there is anyone else present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Motion by Mr. Braga, based on all the evidence and testimony

presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

- 1. That the use is compatible with neighboring land uses.**
- 2. The use does not create a nuisance in the neighborhood.**
- 3. That the use does not hinder the future development of the City.**
- 4. That the use conforms to all applicable sections of the special use requested.**
- 5. That the use is in conformance with the purpose and intent of the East Providence Comprehensive Plan and applicable standards of this Chapter.**

Ms. Toledo moves that the special use permit be Granted subject to the petitioner fulfilling the following conditions:

- 1. Petitioner(s) obtaining any, and all, necessary permits.**
- 2. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.**

3. No water or sewage service shall be permitted.

4. All sides, including the roof, must remain solid, lest introduction of garage doors along the front. Neither doors nor windows, to include skylights, will be permitted on the westerly, northerly, and easterly sides of the subject garage. Only garage doors will be permitted on the southerly (front) side of the garage.

5. The petitioner will be required to submit a drainage plan to the attention of the City of East Providence City Engineer, documenting compliance with all drainage regulations. No additional run-off or redirecting of run-off shall ensue as a result of the subject improvement.

6. The accessory garage shall solely be used for personal residential storage purposes.

Chairman Saveory asks Mr. Janiero if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review, said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. Janiero responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by Mr. Cunha.

Roll Call Vote:

Mr. Braga - Aye Will not result in a neighborhood nuisance because it is merely a vertical expansion. Furthermore, meets all of the requisite standards for the granting of a special use permit.

Mr. Beauparlant - Aye Notes that as an aspect of realizing the improvement, a long-standing drainage problem may be rectified, and therefore believes it will enhance the neighborhood.

Mr. Cunha - Aye

Ms. Toledo - Nay Neighbors concerns have been justified, concerns that were similarly expressed by the Planning Department. The drainage issue should be resolved regardless. However, it is unfair,

given property constraints that they be further impacted by the raising of a solid wall. This will only further obstruct their view.

Chairman Saveory - Aye The accessory structure pre-dates the adoption

of the regulations. Personally, he believes that this approval will in fact resolution of a problem that is impacting both neighbors.

failure to approve may continue said problem without resolution.

Special use permit granted 4 - 1, with Ms. Toledo voting Nay, subject to the aforementioned condition(s).

3. Petition No. 6458: Jose and Debra Pedro, seek Dimensional Relief, to permit retention of living space introduced above an accessory garage as well as a number of other on-site improvements, including above-ground swimming pool, pavers and two-story sunroom addition [specified relief described below], for property located at 74 Milburn Road, being Map 408, Block 08, Parcel 008.00, and located in a Residential 3 District.

A. Dimensional Variance, to retain principal living space introduced above the accessory garage without complying with the minimum rear-yard setback requirement pursuant to Section 19-145 – Six (6) foot variance, resulting in the referenced living space being situated approximately nineteen (19) feet off of the rear (northerly) property boundary.

B. Dimensional Variance, to permit retention of a number of on-site improvements, to include pavers, above-ground swimming pool, and two-story sunroom addition, resulting in exceeding the maximum impervious lot coverage requirement pursuant to Section 19-145 – Ten (10%) percent variance, resulting in the subject property being

approximately fifty-five (55%) percent covered with total impervious surfaces, inclusive of all structures.

[NOTE: The initial petition referenced a fifty-seven (57%) percent dimensional deviation. However, during the subject meeting it was decided that a certain percentage of hard surface (pavers) and an on-site shed, would be physically removed from the property, thereby reducing overall impervious coverage by two (2%) percent, resulting in a reduced total of fifty-five (55%) percent. The referenced changes are reflected in an amended site plan.]

Attorney Bruce H. Cox, with law offices at 1481 Wampanoag Trail, East Providence, informs the Board that he represents the subject petitioners.

Jose Pedro, 74 Milburn Road, East Providence, RI, subject petitioner, is properly sworn in.

Attorney Cox informs the Board that he has a series of photographs, ten (10) in all, and would like to enter them into the record.

Motion by Ms. Toledo to accept the submitted ten (10) photographs, designated Exhibits 'A1' through 'A10', respectively, and render them full exhibits. The motion is Seconded by Mr. Braga, and Unanimously approved.

Attorney Cox notes that the submitted photographs illustrate existing conditions – site as well as structural conditions. The property is defined as a corner-lot, having two (2) front-yards, thereby resulting in hardship from the outset. The setback requirements for a corner-lot are quite different and more restrictive. There is a present deviation in regard to the rear-yard along Milburn Road. The petitioner inadvertently expanded the master bedrooms above the one-car garage. The other issue is in regard to the excessive lot coverage towards the rear-yard, as illustrated on the submitted photographs. There are a number of pavers and above-ground swimming pool. The Planning Department was otherwise favorable in regard to the retention of the above-ground swimming pool. In regard to the excessive lot coverage, although not entirely against, did suggest removal of some coverage to realize somewhat of a rear green space for both aesthetics and drainage. He did personally speak with a Certified Engineer, namely Christopher Duhamel in regard to the installation of the brick pavers, and his response that unlike true hard surface that does not permit water to permeate the ground, the manner in which the subject pavers were installed does allow a certain quantity of drainage. The situation is therefore somewhat more acceptable. Furthermore, the subject lot is the lowest point in regard to the immediate area – both abutting properties being situated at a greater elevation.

Mr. Pedro informs the Board that he has never experienced any drainage problems, albeit situated lower than the abutting properties.

Attorney Cox notes that in regard to retention of the expanded master bedrooms, he would note that there are no windows on that end of the dwelling, thereby averting any impact on the adjacent neighbor.

Mr. Pedro assures the Board that he will never introduce any windows in that location.

Attorney Cox respectfully requests that the Board consider the petitioner's proposal. As an act of good faith, the petitioner is prepared to accept as a condition of approval, that an impervious area approximately 900 square feet in size will be corrected. All pavers will be removed thereby realizing pervious 'grassed' surface. This is being offered, albeit it is a corner-lot and never experienced a single drainage issue. Mr. Pedro acknowledges that he would be willing to accept the stated condition of approval.

Chairman Saveory queries the Board, beginning with Ms. Toledo.

Ms. Toledo notes for the record that the dwelling is rather over-sized for the neighborhood in which it is situated, however he was granted permission by the Board in 2000, for the referenced addition. Personally, has no objection to continued usage of the bedroom, however concurs with the Planning Department recommendation in regard to a reduction in impervious surface by eliminating the pavers.

Mr. Braga notes for the record that he does not have any questions and/or comments at this time.

Mr. Beauparlant asks for clarification on the setback relief sought. Attorney Cox explains that due to the corner-lot situation, what would otherwise be a side-yard is now interpreted as a rear-yard, thereby resulting in the second-floor bedroom over the garage being in violation. It is in fact situated 19-feet away, whereas the minimum side-yard is 15-feet. The rear-yard setback is 25-feet.

Mr. Beauparlant notes for the record that continued usage of the bedroom is reasonable. However, the City has likewise been quite fair with the property owner, as evidenced by the affirmed variances. Therefore, removal of the pavers to reduce overall impervious lot coverage is a reasonable trade-off. Attorney Cox responds that in light of the City's request, there is a location surrounding the pool where the family barbecues as well as presence of a dilapidated shed.

This entire area, including the shed, could be removed, realizing substantial pervious surface. Chairman Saveory asks for clarification on the exact area to be eliminated. Attorney Coz responds that it is the area to the west of the pool, abutting the property owned by George and Marilyn Reese – abutting the fence to the west. Zoning Officer explains that the Board can only grant specific and not general relief, and therefore an exact quantity will be necessary. Attorney Cox responds that the pavers to the west will be an area of 4-feet by 20-feet, or 80 square feet in total. The area of the shed is 60

square feet, resulting in a total removal of approximately 140 square feet. Zoning Officer notes that he will recalculate the coverage percentage for their consideration. If approved, he would request that the application and site plan be modified to reflect the conditions of approval just discussed. Attorney Cox states that they have already done the calculation. Presently, the property is at approximately 57% total coverage, and the removal of the discussed improvements would realize a 2% reduction, down to approximately 55% overall.

Mr. Cunha notes for the record that he does not have any questions and/or comments at this time.

Mr. Midgely notes for the record that he does not have any questions and/or comments at this time.

Mr. Croke notes for the record that the property has been well accommodated by the affirmative vote of a number of variances. Initially, the rear living area was to accommodate family members. What was once a simply raised-ranch, has grown into an enormous structure. When is enough, enough, is his question – when will it all end. Once relief has been granted, whatever hardship existed should have been satisfied.

Chairman Saveory inquires if the subject dwelling contains only a single-family dwelling? Attorney Cox responds in the affirmative.

Chairman Saveory inquires if there is a kitchen in the lower-level area? Attorney Cox responds in the negative, noting that the petitioner had a sizeable family, necessitating additional living area.

Zoning Officer informs the Board that the petitioner did allow both the Building Official and himself to conduct a thorough inspection of the subject premises. The property is solely improved with a singular kitchen and is in fact being used as a single-family dwelling. The property does contain a vast quantity of bedrooms to accommodate the once sizeable family.

Chairman Saveory asks for clarification on the present proposal because he was present for both previous variances – approval on the two-story sunroom addition and denial of an expansion of said sunroom. Attorney Cox responds that that is still as was initially approved – the present proposal being retention of the second-floor bedroom that was supposed to remain storage space. He does however understand the confusion.

Chairman Saveory inquires if the bedroom expansion has already been completed? Attorney Cox responds in the affirmative.

Chairman Saveory notes that the property has been well over-developed. He will never consider granting additional relief in the future, regardless of the future ownership. His greatest concern

is that it is primed for conversion to a two-unit dwelling. He is getting frustrated by the ask for forgiveness rather than permission tactic. Someone will eventually take the hit.

Ms. Toledo inquires if as a condition of approval she could impose a limitation on future development of the subject property? Zoning Officer responds that such a limitation could be imposed – restricting all future construction, even that which would otherwise be compliant. What cannot be conditioned is voiding an individual’s rights to appear before the Board. An individual is always entitled to appear before the Board for additional relief and/or modify a previous petition.

Chairman Saveory inquires if there is anyone present who would like to speak in favor of the subject petition.

Paul Kuiper, 69 Plymouth Road, East Providence, RI, is properly sworn in. Mr. Kuiper requests permission to speak on behalf of the subject petition.

Mr. Kuiper informs the Board that he is fully supportive of the subject petition. He has never experienced a single drainage problem. In fact, his own pool is probably four-times the size of the petitioner’s pool.

Chairman Saveory then inquires if there is anyone else present who

would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Motion by Ms. Toledo, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and not due to a physical or economic disability of the applicant excepting those physical disabilities addressed in RIGL 45-24-30(16).

2. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

3. The granting of the requested variances will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the city's comprehensive plan upon which this chapter is based.

4. That the relief to be granted is the least relief necessary.

Ms. Toledo hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. In granting the dimensional variances, that the hardship that will be suffered by the owner of the subject property if the dimensional variances are not granted shall amount to more than a mere inconvenience.

Ms. Toledo moves that the dimensional variances be Granted subject to the petitioner fulfilling the following conditions:

- 1. Removal of the on-site shed and replaced with pervious surface.**
- 2. Removal of pavers, measuring approximately four (4) feet by twenty (20) feet, or an approximate area of 80 square feet - said area to be situated towards the rear yard (between the above-ground swimming pool and westerly property boundary). The subject area will then be replaced by either grass or plantings, or a combination thereof.**
- 3. No further expansion / intensification of the subject property without the express approval of the Zoning Board of Review.**
- 4. Petitioner(s) obtaining any, and all, necessary permits.**

5. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.

Chairman Saveory asks Mr. Pedro if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. Pedro responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by Mr. Braga.

Roll Call Vote:

Ms. Toledo - Aye

Mr. Braga - Aye In regard to the deficient rear-yard setback, the resulting hardship is purely associated with the presence of two (2) front-yards. In regard to excessive coverage, the petitioner has agreed to somewhat reduce and the adjacent neighbor has confirmed that there is no resulting drainage impact.

Mr. Beauparlant - Aye Concurs with Mr. Braga's comments.

Mr. Cunha - Aye

Chairman Saveory - Aye

Dimensional variances unanimously granted, subject to the aforementioned condition(s),

[NOTE: Following the decision, the petitioner amends a site plan, as well as signs and dates said plan, reflecting the agreed to modifications.]

4. Petition No. 6459: John Pacheco, seeks a Use Variance, to permit utilization of existing accessory floor-space (accessory breezeway and garage) for office space, said accessory floor space presently being situated within the residentially zoned portion of a split-zoned property – the majority of the property presently zoned Commercial 1 District and used for professional office purposes – for property located at 8 Dover Avenue, being Map 407, Block 07, Parcel 001.00, and located in a split-zoned Commercial 1 District and Residential 3 District.

Attorney Martin P. Sleprow, with law offices at 1481 Wampanoag Trail, East Providence, RI, informs the Board that he represents the subject petitioner.

John Pacheco, 21 Picket Road, East Providence, RI, subject petitioner, is properly sworn in.

Attorney Sleprow describes the subject property, noting that it contains in excess of 14,000 square feet – being situated at the

intersection of Warren and Dover Avenue. The property is presently improved with a professional office operation and attached accessory two-car garage. The present proposal is to expand usage of the commercial operation into the two-car garage. Only minor modifications are required. The garage doors have already been replaced with a standard door, however the interior has not been changed. The Planning Department staff report was in error when it indicated that the interior had already been converted to usable office space. The reason for the variance is due to the presence of a split-zone – the first, 100-feet off of Warren Avenue being zoned commercial, and the remaining 50-feet to the rear zoned residential. The garage portion of the structure is physically situated within the residentially zoned portion of the property. No expansion of the structure or exterior changes to said structure, are proposed. It should be emphasized that the Planning Department supports the subject proposal provided there is no further expansion of the facility and the southerly area beyond the garage remains open space in perpetuity and is vegetated for buffering purposes. The petitioner has already agreed to both of these conditions. This is perhaps one of those unique cases that does in fact meet the very difficult burdens associated with the granting of a use variance. There is simply no beneficial usage of the area zoned residential or that portion of the structure situated within said residential zone.

John Pacheco provides the following information in response to questions from legal counsel.

Mr. Pacheco informs the Board that he is the owner of the subject property. Both the first and second-floors are presently occupied by professional offices. The garage is presently being used purely for storage purposes. His son wanted to surprise him, and thus removed the garage doors prior to obtaining the necessary approvals, however the interior remains unimproved. The goal is to expand office space into the accessory garage space. There will be no expansion or change in the exterior of the building. He is also agreeable to the conditions expressed by the Planning Department.

Attorney Slepko concludes his presentation by arguing that this may be a rare classical case for a use variance, because there really is no beneficial usage of the accessory garage given its placement within the residentially zoned portion of the property.

Chairman Saveory queries the Board, beginning with Ms. Toledo.

Ms. Toledo inquires as to how long the petitioner has owned the subject property? Mr. Pacheco responds that it will be two (2) years on the 31st of March.

Ms. Toledo inquires if the petitioner owned the property when it was first converted to a real estate office? Mr. Pacheco responds in the negative.

Ms. Toledo inquires as to the anticipated office usage of the present garage space and traffic that may result? Mr. Pacheco responds that the improvements will consist of installing a drop-ceiling, wall-to-wall carpet, and that is all. It will probably consist of no more than a singular room with a couple of desks.

Ms. Toledo inquires once again about resulting traffic volumes? The primary entrance will still be from the front of the premises, thereby directing all traffic to the front parking area. Some minor traffic may generate through the new side entrance.

Mr. Braga notes for the record that he concurs with counsel's assertion that the proposal meets the use variance standards. Other than keeping as is, there is simply no beneficial usage.

Mr. Beauparlant inquires about the present usage of the property? Mr. Pacheco responds that the offices are presently occupied by an accountant and attorney. However, taxes along are approximately \$7,000, not including insurance and other maintenance fees. The additional rental income will assist in off-setting the expense of operating the facility.

Mr. Pacheco notes that he does not presently occupy the premises.

Mr. Beauparlant likewise concurs that this meets the requisite burdens, and therefore has no objection.

Mr. Cunha notes that he does not have any questions and/or comments at this time.

Mr. Midgely notes that he does not have any questions and/or comments at this time.

Mr. Croke notes for the record that for approximately 50-years the subject premises was utilized for single-family purposes. Eventually it was converted to a real estate office, which he has no issue with. What does concern him is in regard to these split-zoned properties, is their eventual conversion entirely too commercial intruding into residential neighborhoods. Attorney Sleprow responds that these split designations result in a multitude of problems, basically establishing the hardship that they are now contending with.

Mr. Croke notes that the previous owner installed shrubbery along the sidewalk when he redid the driveway, requiring pedestrians to walk into the street. Mr. Pacheco responds that he is more than willing to remove the referenced shrubbery as a condition of approval.

Chairman Saveory asks that the residence to the rear of the garage along Dover Avenue be further screened by a landscaped buffer or fencing, to segregate the residence from the expended office space. Mr. Pacheco responds in the affirmative. Zoning Officer asks that the

Board be specific in regard to the specified buffer – stockade fencing, etc.

Chairman Saveory inquires if the rear patio area will be maintained? Mr. Pacheco responds that although well under-utilized, he will be keeping it for the enjoyment of the employees.

Chairman Saveory inquires if there is anyone present who would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition.

Patricia Kimball, 1 Dover Avenue, East Providence, RI, is properly sworn in. Ms. Kimball requests permission to speak in regard to the subject petition.

Ms. Kimball informs the Board that she is neither for nor against, but simply to comment on the increased traffic and activity within the area. During her 26-years of residence within the subject neighborhood, traffic has increased due to the intensification of surrounding commercial businesses. Besides, the law office directly next door, the subject office operation has attracted additional traffic. They have a tendency to park directly on the roadway, usually right in front of her home. Sometimes they actually block her driveway. She has observed school buses that could not travel down Dover Avenue due to the on-street congestion, resulting in reversing back out onto

Warren Avenue. It has become a horrendous neighborhood situation.

Chairman Saveory inquires if Ms. Kimball resides directly behind the law office? Ms. Kimball responds in the affirmative.

Ms. Kimball notes that with the increased activity at the subject property, quite often the driveway is occupied, causing her difficulty in exiting her own driveway. Also, Dover Avenue is forever being used as a cut-through.

Chairman Saveory inquires if Ms. Kimball is experiencing greater long-term parking on Dover Avenue? Ms. Kimball responds in the affirmative.

Chairman Saveory notes that the subject petitioner has a vast parking area that can accommodate all of their parking needs. Ms. Kimball responds that people do not have a tendency to use the parking area, preferring to park on the street – she has personally observed this. Zoning Officer notes that the majority of the problems must stem from the Sao Bento Law Office, because they have a number of offices, and little on-site parking. He notes that a variance was granted the subject property, permitting great intensification without the provision of any parking.

Mr. Cunha expressly inquires if some of the individuals who park on Dover Avenue, result from the office entities associated with the

subject property? Ms. Kimball responds in the affirmative, noting that she has personally observed this. Her concern is in regard to the type of business that will now occupy the new space and their contribution to the problem she is experiencing. Chairman Saveory responds by explaining that the subject petitioner has well in excess of the regulatory parking necessary to meet his personal office needs. He should not be blamed for those surrounding businesses that are not able to meet their needs and actually cause the on-street parking congestion problem.

Mr. Cunha notes that he concurs with the Chairman's comments. The petitioner is providing more than sufficient parking. He cannot control every situation. It would be an altogether different argument if the petitioner were intensifying without meeting the additional parking needs – then he would be contributing directly to the problem. He should not be punished for the problems of others. Zoning Officer states that at most the petitioner's operation necessitates eight (8) to ten (10) spaces, whereas the front parking area can accommodate well in excess of this number.

Chairman Saveory responds that he is more than willing to communicate her concerns to the appropriate parties, however it is beyond their control to correct the problems just discussed.

Ms. Kimball inquires as to the type of entity that would occupy the new space? Mr. Pacheco responds that he is aware of a stockbroker

that is interested in the subject space.

Mr. Midgely advises Ms. Kimball that if individuals are blocking driveways or parking in areas designated for 'No Parking,' then she should be communicating her concerns to the Police Department.

Chairman Saveory then inquires if there is anyone else present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Motion by Ms. Toledo, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

- 1. That the use is compatible with neighborhood and surrounding land uses.**
- 2. That the use will not create a nuisance in the subject neighborhood.**
- 3. That the use will not hinder the future development of the City.**
- 4. That the use does conform to applicable section(s) of the use requested.**

Ms. Toledo hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. That the applicant would be deprived of all beneficial use of the subject property if the petitioner is required to comply with the Ordinance.

Ms. Toledo moves that the use variance be Granted subject to the petitioner fulfilling the following conditions:

1. No further expansion / intensification of the subject property without the express approval of the Zoning Board of Review.

2. Installation of a solid six-foot high fence along the southerly (side) property boundary to screen the commercial operation from the abutting Parcel 011.00.

3. Removal of bushes along Dover Avenue – said bushes obstructing the pedestrian public right-of-way (sidewalk).

4. The entire southerly side of the property – between the present garage (proposed commercial space) and southerly property boundary, shall remain ‘open space’ in perpetuity – no further development.

5. Petitioner(s) obtaining any, and all, necessary permits.

6. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.

Chairman Saveory asks Mr. Pacheco if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. Pacheco responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by both Mr. Cunha.

Roll Call Vote:

Ms. Toledo - Aye

Mr. Braga - Aye

Mr. Beauparlant - Aye There is lack of beneficial use in regard to the garage. The stipulated conditions of approval will ensure that there is no resulting negative impact on the adjacent residence. Finally, given the character of Warren Avenue, this is a very compatible land use.

Mr. Cunha - Aye

Chairman Saveory - Aye Based upon the testimony and concessions.

There is simply no other beneficial usage of the subject property.

Use variance unanimously granted, subject to the aforementioned condition(s).

5A. Petition No. 6460: Joel L. and Jane M. DeMelo, seek Dimensional Relief, to permit the razing of a mixed-use residential / industrial operation (ceramic shop, woodwork shop and warehouse), said mixed-use being established by variance, and introduce a three-unit residential dwelling, without complying with the minimum side-yard setback requirement pursuant to Section 19-145 – Two (2) foot variance, the referenced dwelling to be situated approximately six (6) feet off of the northerly (side) property boundary, for property located at 30, 32 and 38 James Street, being Map 106, Block 07, Parcel 020.00, and located in a Residential 6 District.

Chairman Saveory notes for the record that he has a professional relationship with the subject petitioner, having recently done some construction work on his behalf, and will therefore be recusing himself. Mr. Croke will not be both a participating as well as voting member on the next four (4) agenda items – 5A, 5B, 6A and 6B.

Zoning Officer notes for the record that all four (4) referenced agenda items may be handled jointly. However, four (4) decisions will be

required because it is in regard to two (2) distinct parcels – each of which necessitate use and dimensional relief.

Joel DeMelo, 258 Winthrop Street, Rehoboth, MA, subject petitioner, is properly sworn in.

Mr. DeMelo informs the Board that his goal is to raze the entire property, extinguishing all existing structures. The property has been improperly developed over time, in a rather haphazard piece-meal fashion. Approximately 70% of the subject property is covered by buildings. It is presently comprised of a mixture of land uses, which was the manner in which he purchased it. The building to the left was approved as a ceramic shop, albeit he has personally used it for different purposes. It is purely used for storage purposes. In addition, the subject building has two (2), two-bedroom units. The building to the right is used for wood-working purposes. The property is quite unique, considering it is zoned Residential 6 District.

On several occasions he has obtained building permits to improve the property, however has decided against due to the non-conforming nature of the property. The present goal is to use it in a more residentially conforming manner. He has furnished super-imposed illustrations of the manner in which he anticipates the property will look once the project is completed. The reason for the six-foot side-yard setbacks is to permit wider driveways to realize suitable off-street parking and provision of a true ‘grassed’ rear-yard. Increasing pervious surface is not only for aesthetic purposes, but

also to off-set runoff. The proposed dwellings were selected because they would have been the architectural designs of that period.

Vice-Chairman Beauparlant queries the Board, beginning with Mr. Braga.

Mr. Braga asks the Zoning Officer to clarify for the record the extent of the relief sought. Zoning Officer explains that the present land use is not technically pre-existing non-conforming, but established by way of a variance. The then Zoning Board of Review approved a mixture of land uses, including a ceramic shop and warehouse, as well as residential. The present proposal is to raze all structure and develop anew. The property is comprised of two (2), 5,000 square foot parcels. Once, all structures are razed, they will be deemed developable lots, however solely permitting single-family dwelling. The first lot is to be improved for duplex purposes necessitating a minimum of 7,500 square feet, whereas the parcel has only 5,000 square feet. The second parcel is to be improved for triplex purposes, which is outright prohibited. When the petitioner sought out the City's guidance, speaking to dimensional compliance, it was concluded that minor side-yard deviations was preferable in order to realize sufficient parking while also realizing a true rear-yard. The property is presently 100% impervious, and this will assist in curing that deficiency that was established by variance. Clearly, the use component is purely within the purview of the Board to determine appropriateness. Therefore, both parcels necessitate a use variance

to permit the respective land use(s) and dimensional relief for deficient side-yard(s).

Mr. DeMelo notes for the record that there also appears to be a front-yard deviation, however the dwellings are purposely being situated at the ten-foot setback marker to realize compliance with the average alignment of surrounding structures - therefore, no deviation results. Zoning Officer acknowledges that that is a good point. He informs the Board that it was customary practice to grant discretion to an individual property owner to decide whether they wanted to construct to the average alignment or comply with the requisite setback. However, after reviewing the subject Ordinance language once again, it is clear that it is mandatory that construction be aligned with the average setback

Zoning Officer proceeds to read the referenced language verbatim to the Board.

Mr. Braga thanks Mr. DeMelo for the subject proposal because residential land use is definitely more in-line with the neighborhood character. He is personally quite familiar with the property having grown up in the subject neighborhood, and in his opinion has been a long-standing eyesore. The only question for discussion is why a duplex and triplex, rather than two (2) duplexes. Mr. DeMelo responds that there are several reasons. The first and foremost reason is to justify the expense involved in redeveloping the property,

the demolition cost along will be considerable. Mr. Braga notes that it is not out of character, there are few three-unit dwellings scattered throughout. Mr. DeMelo then notes that the second reason is due to the heavy neighborhood congestion – the immediate structure is similarly improved with a three-unit dwelling and he did not want his development to be dwarfed by surrounding structures. The roof height on the unit to the right matches the immediate residence, as does the residence to the left. His goal was to match the surrounding architecture and overall massing.

Mr. Braga notes for the record that he is also in agreement with the front-yard orientation – preferring the average alignment appearance, while realize some semblance of a rear-yard. Unless he hears something different from the public, he has no personal objections.

Mr. Cunha inquires as to the present arrangement. He inquires as to how it is presently configured behind the closed gate. Mr. DeMelo responds that the residence is situated behind the gate, but integrated into the overall development. It will be razed as well, should he be approved.

Mr. Cunha notes that he has passed the subject property for many years, and never recognized the presence of the residence until he conducted a personal site inspection. He then inquires if all of the construction material and equipment will be removed. Mr. DeMelo acknowledges that he has out-grown the site and found an alternate

location for his storage. The property will only be used for residential purposes. If he were to be denied, he would attempt to find a similar industrial tenant. He would prefer a residential rental situation. Under such circumstances, there will be no reason to continue commercial usage of the property. Mr. DeMelo states that he has no exception to accepting that as a condition of approval. Zoning Officer acknowledges that if the application is approved, there will be no need for such a condition because it will have vacated the previous variance approval. Residential usage prohibits the introduction of commercial vehicles and materials. Mr. Cunha notes that a condition of approval is not required, he simply wanted it noted on the record.

Mr. Croke inquires if in total three (3) structures will be razed, and two (2) new structures introduced? Mr. DeMelo responds in the affirmative.

Mr. Croke notes that the three-unit dwelling has three-bedroom units on the upper-floors. He asks if the applicant would consider redesigning and locating the two (2) bedroom unit on the upper-floor. He is concerned about children and evacuation in case of a fire. Mr. DeMelo responds that he has other similar arranged apartment units and they function quite well. Besides, he will furnish two (2) means of egress as required by law. It will be difficult to rearrange, because of the common laundry room provided on the lower-level, and thus the reason why the lower-level unit has only two (2) bedrooms. Mr. Croke notes that he understands, and was simply inquiring.

Ms. Toledo asks for clarification - the lower, two-bedroom unit, will be partially below grade, and each unit will occupy its own floor-space?

Mr. DeMelo responds in the affirmative.

Mr. DeMelo notes that if the Board has any concern about the exterior stairwell, he will be covering it to ensure user safety during inclement weather.

Vice-Chairman Beauparlant notes that he is quite pleased by the proposal because it will introduce a land use that is clearly more in-keeping with the character of the neighborhood. He asks the Zoning Officer if there is any coverage deviation. Zoning Officer responds in the negative, noting that the only variance is in regard to side-yard setback.

Mr. DeMelo informs the Board that he does have an alternative design illustrating full setback compliance. However, the design in question fails to realize any semblance of a rear-yard because it is impossible to provide two (2) standard driveways. Besides, all surrounding residences are situated closer to one another – reduced setback is quite typical of the subject neighborhood.

The Board members agree that they prefer to realize true rear-yards for minor setback relief.

Vice-Chairman Beauparlant inquires if there is anyone else present who would like to speak in favor of the subject petition. Hearing and seeing none, Vice-Chairman Beauparlant inquires if there is anyone present who would like to speak against the subject petition.

Cindy Segal, 46 James Street, East Providence, RI, requests permission to speak in regard to the subject petition. Ms. Segal is properly sworn in.

Ms. Segal informs the Board that she is actually present on behalf of her mom. She would like to know what the distance will be between the new residence and her mom's home. Mr. DeMelo responds that it will increase to approximately 23-feet. The reason for alternating the driveway design was to both provide a greater setback to the neighbors and provide some consistency in the manner driveways are presently arranged.

Ms. Segal then inquires about off-street parking provision, concerned about insufficient parking resulting in further constraining on-street parking. Mr. DeMelo responds that the duplex abuts her mom's home. The proposed driveway will accommodate the requisite four (4) vehicles. Also, the setback to her residence is even greater – 25-feet versus 23-feet previously noted.

Vice-Chairman Beauparlant then inquires if there is anyone else present who would like to speak against the subject petition. Hearing

and seeing none, Vice-Chairman Beauparlant queries the Board for a motion.

Motion by Mr. Braga, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and not due to a physical or economic disability of the applicant excepting those physical disabilities addressed in RIGL 45-24-30(16).

2. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

3. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the city's comprehensive plan upon which this chapter is based.

4. That the relief to be granted is the least relief necessary.

Mr. Braga hereby further finds pursuant to Section 19-45(b) of the City

of East Providence Zoning Ordinance:

5. In granting the dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience.

Mr. Braga moves that the dimensional variances be Granted subject to the petitioner fulfilling the following conditions:

- 1. Petitioner(s) obtaining any, and all, necessary permits.**
- 2. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.**

Vice-Chairman Beauparlant asks Mr. DeMelo if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. DeMelo responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by Mr. Cunha.

Roll Call Vote:

Mr. Braga - Aye An improved transition from a land use that is quite out of character with the neighborhood to something that is more in-keeping with a residential neighborhood.

Mr. Cunha - Aye Concurs with Mr. Braga's comments.

Mr. Croke - Aye

Ms. Toledo - Aye

Vice- Chairman

Beuparlant - Aye Will be a great improvement to the neighborhood.

Dimensional variance unanimously granted, subject to the aforementioned condition(s),

5B. Petition No. 6461: Joel L. and Jane M. DeMelo, seek a Use Variance, to permit the razing of a mixed-use residential / industrial operation (ceramic shop, woodwork shop and warehouse), said mixed-use being established by variance, and introduce a three-unit residential dwelling, otherwise prohibited within the Residential 6 District pursuant to Section 19-98 'Schedule of Use Regulations, for property located at 30, 32 and 38 James Street, being Map 106, Block 07, Parcel 020.00, and located in a Residential 6 District.

[NOTE: For specific testimony, refer above under Agenda Item 5A - Petition No. 6460.]

Motion by Mr. Braga, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

- 1. That the use is compatible with neighborhood and surrounding land uses.**
- 2. That the use will not create a nuisance in the subject neighborhood.**
- 3. That the use will not hinder the future development of the City.**
- 4. That the use does conform to applicable section(s) of the use requested.**

Mr. Braga hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

- 5. That the applicant would be deprived of all beneficial use of the subject property if the petitioner is required to comply with the Ordinance.**

Mr. Braga moves that the use variance be Granted subject to the petitioner fulfilling the following conditions:

- 1. Petitioner(s) obtaining any, and all, necessary permits.**
- 2. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.**

Vice-Chairman Beauparlant asks Mr. DeMelo if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. DeMelo responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by both Ms. Toledo.

Roll Call Vote:

Ms. Braga - Aye Reasons stated earlier.

Mr. Cunha - Aye Reasons stated earlier.

Mr. Croke - Aye

Ms. Toledo - Aye

Vice-Chairman

Beauparlant - Aye

Use variance unanimously granted, subject to the aforementioned

condition(s).

6A. Petition No. 6462: Joel L. and Jane M. DeMelo, seek Dimensional Relief, to permit the razing of a mixed-use residential / industrial operation (ceramic shop, woodwork shop and warehouse), said mixed-use being established by variance, and introduce a two-unit residential dwelling, without complying with the minimum side-yard setback requirement pursuant to Section 19-145 – Two (2) foot variance, the referenced dwelling to be situated approximately six (6) feet off of the southerly (side) property boundary, for property located at 30, 32 and 38 James Street, being Map 106, Block 07, Parcel 020.10, and located in a Residential 6 District.

[NOTE: For specific testimony, refer above under Agenda Item 5A - Petition No. 6460.]

Motion by Mr. Braga, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and not due to a physical or economic disability of the applicant excepting those physical disabilities addressed in RIGL 45-24-30(16).

2. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

3. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the city's comprehensive plan upon which this chapter is based.

4. That the relief to be granted is the least relief necessary.

Mr. Braga hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. In granting the dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience.

Mr. Braga moves that the dimensional variances be Granted subject to the petitioner fulfilling the following conditions:

1. Petitioner(s) obtaining any, and all, necessary permits.

2. Strict compliance with the submitted site plan (or amended site

plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.

Vice-Chairman Beauparlant asks Mr. DeMelo if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. DeMelo responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by Mr. Cunha.

Roll Call Vote:

Mr. Braga - Aye

Mr. Cunha - Aye

Mr. Croke - Aye

Ms. Toledo - Aye

Vice- Chairman

Beauparlant - Aye

Dimensional variance unanimously granted, subject to the aforementioned condition(s),

6B. Petition No. 6463: Joel L. and Jane M. DeMelo, seek Dimensional

Relief, to permit the razing of a mixed-use residential / industrial operation (ceramic shop, woodwork shop and warehouse), said mixed-use being established by variance, and introduce a two-unit residential dwelling, otherwise defined as a prohibited land use due to failing to comply with the minimum lot density requirement pursuant to Section 19-98 'Schedule of Use Regulations,' for property located at 30, 32 and 38 James Street, being Map 106, Block 07, Parcel 020.10, and located in a Residential 6 District.

[NOTE: For specific testimony, refer above under Agenda Item 5A - Petition No. 6460.]

Motion by Mr. Braga, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

- 1. That the use is compatible with neighborhood and surrounding land uses.**
- 2. That the use will not create a nuisance in the subject neighborhood.**
- 3. That the use will not hinder the future development of the City.**
- 4. That the use does conform to applicable section(s) of the use requested.**

Mr. Braga hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. That the applicant would be deprived of all beneficial use of the subject property if the petitioner is required to comply with the Ordinance.

Mr. Braga moves that the use variance be Granted subject to the petitioner fulfilling the following conditions:

- 1. Petitioner(s) obtaining any, and all, necessary permits.**
- 2. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.**

Vice-Chairman Beauparlant asks Mr. DeMelo if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. DeMelo responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by Mr. Cunha.

Roll Call Vote:

Ms. Braga - Aye Reasons stated earlier.

Mr. Cunha - Aye Reasons stated earlier.

Mr. Croke - Aye The petitioner is reducing the overall intensity of the property and extinguishing non-conforming land uses.

Ms. Toledo - Aye

Vice-Chairman

Beauparlant - Aye Concurs with Mr. Croke's comments.

Use variance unanimously granted, subject to the aforementioned condition(s).

7. Petition No. 6465: John D. Jarrell, seeks a Special Use Permit, to permit conversion of a present rooming house to a three-unit dwelling as well as convert a separate structure containing pre-existing nonconforming commercial offices to a four-unit dwelling – multi-unit residences being permitted by special use permit pursuant to Section 19-98 'Schedule of Use Regulations', provided the proposed number of residential units is in accordance with the prescribed density requirements outlined in Sections 19-216 – 19-218 'Multifamily Dwellings', for property located at 3120 – 3126 Pawtucket Avenue, being Map 310, Block 01, Parcel 001.00, and located in a Residential 5 District.

[NOTE: Petition No. 6464 is dismissed. Initially, a dimensional variance for locating off-street parking within the front-yard setback was requested. However, it is determined during the subject hearing that it is not required, and therefore dismissed. The submitted Class I Surveyed Site Plan documents that the proposed off-street parking does not encroach into the front-yard setback. Application is modified accordingly.]

Attorney Bruce H. Cox, with law offices at 1481 Wampanoag Trail, East Providence, RI, informs the Board that he represents the applicant Mr. Jarrell.

Attorney Cox informs the Board that the applicant was unable to attend tonight's hearing because he has two (2) children who just won the state championship in wrestling and are now competing in the Nations in Baltimore, MD. He does apologize and does not mean it as an affront to the Board. However, he does have Mr. Timothy Reid, the designer on the project who has worked extensively with Mr. Jarrell, as well as the surveyed plans prepared by Mr. Murgo.

Attorney Cox proceeds by stating that they have already had lengthy discussions with the Fire Marshalls, Lt. Bellamy and Captain Elmasian, who actually inspected the property. The present goal is to convert the front structure, presently improved with a bed and breakfast, to a three-unit apartment complex. Each unit being

improved with two (2) bedrooms, respectively. The property has been deemed historical – defined as a plaque home, designating its historical significance. The rear structure, presently improved with a mixture of commercial and residential land usage, will be converted to purely residential usage – two (2) two-bedroom units and two (2) one-bedroom units. Dimensional relief is being requested for introducing parking within the front-yard setback, for which the Planning Department has not offered any objection. However, there is some question as to whether dimensional relief is even required, because it does not appear to encroach into the front-yard setback pursuant to the submitted Class I Surveyed Site Plan. Zoning Officer acknowledges that dimensional relief is not required. He notes that the submitted survey plan was forwarded to his attention following the advertising and noticing deadline. Therefore, out of an abundance of caution, the subject relief was documented in order avert re-advertising and re-noticing. Once the survey plan was submitted, it was clear that the proposed off-street parking was situated entirely outside the requisite front-yard setback. Therefore, the only form of relief required is a special use permit. He should also note that the applicant has completed the density analysis pursuant to Section 19-216 through 19-218 of the Ordinance, to ensure that the proposed multi-unit residential development can be sought by means of a special use permit. The applicant has documented that he meets the required per unit density, and may therefore seek the referenced conversion by way of special use – averting the need for a use variance.

Attorney Cox continues by explaining that in pursuing redevelopment of the subject property, they will be vacating in perpetuity several present non-conforming land uses, including a bed and breakfast as well as commercial enterprises within a residential district. A particular document failed to be included in the submission package – said document being the third-floor unit layout. He proceeds to distribute the subject document.

Zoning Officer notes that while counsel distributes the third-floor unit layout, he wishes to read into the record a letter from an abutter just received on this date. Counsel has already been furnished a copy. Zoning Officer reads the letter verbatim into the record. The letter is dated 28 March 2012, and is from the homeowner at 22 Cumberland Road, who notes that he is out-of-town on business. The nature of the letter is more question-oriented, and therefore requests that they be posed to the applicant during the respective hearing.

Attorney Cox responds to the various issues offered via the submitted letter. In regard to the number of trips generated per day, he cannot comment because he is unclear as to how she derived ten (10) additional trips per day. The current proposal is to extinguish the rear commercial usage and introduce purely residential. It is quite apparent that this would result in a reduction, due to the higher traffic volumes typically associated with commercial usage. In fact, the Planning Department has commented that they are in agreement with

that conclusion. Regarding code compliance, Mr. Reid is going to testify as to how the property will be rendered fully code compliant once the conversion is completed. This has been substantiated by the recent meeting with the Fire Department. He would now ask that Mr. Reid be sworn in.

Chairman Saveory notes for the record that the Board will give whatever weight they want to the submitted letter. However, from his personal perspective, the traffic situation results from the City's actions in assisting Bay View Academy and their various expansions.

There was an opportunity to provide an alternative means of ingress and egress, however it was not supported and is now too late.

Timothy Reid, applicant's designer, is properly sworn in.

Mr. Reid informs the Board that the applicant's first goal was to redesign the parking area to realize code-compliant parking spaces – 9' x 20' and proper aisle widths. The rear building was previously occupied by a variety of land uses, at one time upwards of five (5) businesses. In order to ensure reasonable living accommodations, they decided to merge the spaces down to four (4) residential apartments. The front Victorian building was likewise redesigned to permit an individual unit per floor, rather than the present sprawling bed and breakfast. One major improvement was the introduction of the second means of egress to ensure code compliance. The second covered stairwell will be hidden behind the building to deter

detracting from its visual integrity. It is an historical building and their goal is to preserve its appearance. It is quite timely to engage in the code upgrades because the dwelling needs to be rehabbed soon if it is to be preserved – especially the area in which the stairwell will be accommodated.

Mr. Reid proceeds to describe the submitted floor-plans. The rear building is comprised of four-units. The first studio-unit will be located towards the front. The second, two-bedroom unit, is a combination of two (2) sizeable commercial spaces. The third-unit is actually a two-story residence. The fourth-unit is located entirely on the second-floor. Addressing the concern of the individual who submitted the letter, the referenced units will be quite nice and cater to a more affluent clientele. The referenced units are also quite safe – having already been individually upgraded with smoke and heat detectors, all connected to an individual alarm system. The Fire Department is quite happy with the present improvements. The Victorian dwelling will be improved with individual units by floor. Introduction of the rear stairwell will not only provide a second means of egress, but also direct pedestrian traffic to the redesigned parking area. Additional parking will be introduced towards the front of the property.

Attorney Cox notes for the record that there was one request made by the Planning Department, which has been reviewed and approved by the property owner, namely that an exterior improvements be

reviewed by the local historical commission. It is acceptable to impose as a condition of approval, if the Board so sees fit to do so. Mr. Reid adds that the exterior stairwell will be introduced in such a manner that it will fit in with the architectural integrity of the residence.

Chairman Saveory queries the Board, beginning with Ms. Toledo.

Ms. Toledo inquires if there is a third structure on the subject property, referring to the residence situated to the right of the referenced Victorian dwelling? Attorney Cox explains that the subject residence is actually on a separate parcel, albeit sharing the driveway situated on I that any, and all, exterior improvements will be subject to both the review and approval of the City's Historical Commission. Attorney Cox responds in the affirmative, noting that it is a plaque residence and therefore must submit to their authority.

Mr. Braga concurs with Counselor's argument that the proposed conversion is a much-improved land use arrangement.

Mr. Beauparlant notes for the record that he does not have any questions and/or comments at this time.

Mr. Cunha notes for the record that he personally believes that this will be an improvement from an off-street parking perspective. He has to conclude that the present rooming house has to generate more

traffic than a triplex. Furthermore, the present rear commercial usage, besides being more traffic intensive, peaks during school hours. Residential usage will peak prior and well after school hours. Therefore, overall the traffic generated should be diminished.

Mr. Midgely notes for the record that he does not have any questions and/or comments at this time.

Mr. Croke notes for the record that the rear portion of the rear 'carriage' facility is in a severe state of disrepair. As observed from the adjacent Bay View property, the subject building has a number of holes. He inquires if that will all be corrected? Attorney Cox responds that that is all part of the overall rehab program. Mr. Reid explains that in addition to rehabbing the building, the area will be fully landscaped. The applicant has every intention to fully repair – engaging in some extensive investment.

Chairman Saveory notes that the plans illustrate three (3) individual means of ingress to the first-floor apartment within the Victorian building. One of the ingress points is to an office, or bonus room. He inquires if that is additional living space for the first-floor unit, or will evolve into future commercial office space? Mr. Reid responds that there will be no commercial presence. The referenced space will be integrated into the first-floor living area.

Chairman Saveory inquires if the applicant is willing to accept as a

condition of approval that no further commercial usage of the property will be permitted? Attorney Cox responds on behalf of his client that that condition is quite acceptable.

Chairman Saveory notes that this is a rather pleasing proposal. Typically, such properties that have been allowed to migrate into an assortment of nonconforming land uses become abandoned and blight on the community. The subject proposal not only reintroduces more appropriate land usage, but also ensures the historical integrity of the subject structures.

Chairman Saveory inquires if there is anyone present who would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition.

Daryl Thorpe, 3126 Pawtucket Avenue, East Providence, RI, is properly sworn in. Mr. Thorpe requests permission to speak in regard to the subject petition.

Mr. Thorpe informs the Board that he is the adjacent property owner, the residence which Ms. Toledo at first thought was part of the overall development. In fact, the subject applicant sold him his residence. He has serious concerns regarding the present proposal – specifically, the lack of security and privacy, as well as overall property values. Furthermore, it will not alleviate traffic, but actually

increase overall traffic. He has resided at the subject premises for 2.5-years, and even well prior as represented to him by other neighbors, the front residence has never been used as a boarding house. The applicant has a large family and they have fully occupied the entire residence for many years. In regard to the rear residence, there are only two (2) occupants, otherwise it has been like an oasis. It is even difficult to find by GPS. At the present time, it is he and his family and the few residents on the other parcel, more so resembling a neighborhood rather than an apartment complex. If this were to be approved, it would look more like an apartment complex arrangement, rather than single-family character that he has been used to. Furthermore, the arrangement of the residences would render usage of his property quite uncomfortable. If his children are playing in their yard, they will be in direct view of the apartment tenants. The shared driveway is another concern. It is quite narrow, precluding two (2) vehicles from passing one another. The subject proposal will deposit much more traffic onto it, potentially causing a safety hazard. There have been occasions when he has had to reverse back onto Pawtucket Avenue to permit another driver to exit the premises. The applicant acknowledged to him that he would have preferred to sell the entire property as an individual entity. However, he found that that was not possible, and therefore sold him the home he now resides at.

Chairman Saveory notes that he sympathizes with Mr. Thorpe, however given the pre-existing legal nonconforming status of the

subject property, being improved with a multitude of structures and land uses, opportunity for improvement will not readily avail itself. If they do not support a reasonable proposal, it may very well become a blight in the community, and even more so to his personal property. This would clearly be a worse situation. Besides, he does not believe based upon the proposal at hand that this will result in lower-income rental situations. The improvements proposed will attract more affluent tenants that most likely will contribute to the neighborhood. Furthermore, it will realize preservation of several historical structures. He does however share Mr. Thorpe's concern regarding the driveway entrance. He inquires if anything could be done to address that situation. Attorney Cox notes that there may be some room for improvement in regard to the driveway entrance. In fact, In-Sight Engineering has prepared a plan to widen the subject entrance. The only issue being the presence of two (2) granite columns – may be some historical significance. Would they be able to relocate them, is unclear. He will commit to the Board that they will investigate the subject issue. Chairman Saveory notes that he does share Mr. Thorpe's concern, even if minimally a cut-out was introduced to permit a driver to pull aside to allow another driver unimpeded passage. Attorney Cox responds that he can acknowledge right now on the record on behalf of his client that that would be an acceptable condition of approval.

Mr. Cunha notes for the record that although the Victorian dwelling has not been used for sometime as a Boarding House, it does not

refrain the property owner from doing so in the future were the subject petition to be denied. We are all quite familiar with the transient nature of the occupants of Boarding Houses. In his personal opinion that would be far worse for Mr. Thorpe's residence and living environment.

Mr. Braga concurs that if the applicant were denied and simply decided to sell, the perspective property owner could reintroduce a more noxious use. In his opinion, the present proposal is a much-more preferred alternative.

Mr. Croke inquires if anyone has any knowledge regarding the roadway in Winchester Woods, which runs directly behind Mr. Thorpe's residence – is it a public right-of-way, or simply a private drive. Mr. Thorpe's driveway and parking could be accessed directly from the referenced roadway, thereby resolving everyone's dilemma. Attorney Cox responds that he does not have any information regarding that roadway, however it is a very good suggestion.

Chairman Saveory then inquires if there is anyone else present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Motion by Ms. Toledo, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East

Providence, the Zoning Board hereby finds:

- 1. That the use is compatible with neighboring land uses.**
- 2. The use does not create a nuisance in the neighborhood.**
- 3. That the use does not hinder the future development of the City.**
- 4. That the use conforms to all applicable sections of the special use requested.**
- 5. That the use is in conformance with the purpose and intent of the East Providence Comprehensive Plan and applicable standards of this Chapter.**

Ms. Toledo moves that the special use permit be Granted subject to the petitioner fulfilling the following conditions:

- 1. No Further commercial usage of the subject property.**
- 2. Maintaining the character of the subject property by permitting the City of East Providence Historic District Commission an opportunity to review any exterior changes / modifications.**
- 3. Investigate the possibility of altering the present driveway configuration and present means of ingress / egress – Determining**

whether driveway opening may be enlarged and/or driveway itself expanded to permit the passage of two (2) vehicles.

4. Petitioner(s) obtaining any, and all, necessary permits.

5. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.

Chairman Saveory asks Attorney Cox, on behalf of his client, if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review, said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Attorney Cox, responds on behalf of his client, that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by both Mr. Cunha and Mr. Braga.

Roll Call Vote:

Ms. Toledo - Aye The long-term rental usage is preferred to a transient use.

Furthermore, it will realize the preservation of a unique and historical property.

Mr. Braga - Aye Concurs with Ms. Toledo's findings.

Mr. Beauparlant - Aye The present purely residential proposal is more

in-keeping with the surrounding residential character. Furthermore, it is consistent with the Comprehensive Plan's 'High-Density Residential' land use classification.

Mr. Cunha - Aye Concurs with Mr. Beauparlant's findings.

Chairman Saveory - Aye Will protect the integrity and character of both the subject property and surrounding neighborhood.

Special use permit unanimously granted, subject to the aforementioned condition(s).

[NOTE: The 10:30 PM curfew is reached. The Board unanimously approves to continue the subject hearing, following a five-minute recess.]

8A. Petition No. 6466: Vijay and Mrinal Malhotra, seek Dimensional Relief, to retain expansion of a prohibited industrial 'wholesale printing' operation, in conjunction with a personal convenience service, resulting in several dimensional deviations as described below, for property located at 150 Newport Avenue, being Map 501, Block 01, Parcel 007.00, and located in a Commercial 3 District.

A. Dimensional Variance, to permit retention of the referenced

improvements, resulting in excessive impervious lot coverage [Existing Condition] pursuant to Section 19-145 - Four and one-half (4.5%) percent variance, the subject property to covered approximately eighty-four and one-half percent with total impervious materials.

B. Dimensional Variance, to permit retention of the referenced improvements, resulting in certain internal travel aisle(s) associated with 90-degree off-street parking to have diminished width [Existing Condition] pursuant to Section 19-282(a) – Two (2) foot variance, the referenced travel aisle(s) (as illustrated on the approved site plan) to have an approximate width of twenty-two (22) feet.

C. Dimensional Variance, to permit retention of the referenced improvements, resulting in certain off-street parking to be situated within the requisite landscaped buffer area off of a public right-of-way (street) pursuant to Section 19-283(f) – Three (3) foot variance, the referenced off-street parking (as illustrated on the approved site Plan) to be situated approximately two (2) feet from the respective right(s)-of-way.

D. Dimensional Variance, to permit retention of the referenced improvements, without provision of adequate off-street parking pursuant to Section 19-284(a)(20 and 33) – Three (3) space variance, resulting in a total provision of thirteen (13) off-street parking spaces.

E. Dimensional Variance, to permit retention of the referenced improvements, without provision of an adequately sized off-street loading space pursuant to Section 19-289(c) – Two hundred and seventy (270) square foot variance, resulting in the referenced off-street loading space having an approximate total footprint of five-hundred (500) square feet.

Attorney Bruce H. Cox, with law offices at 1481 Wampanoag Trail, East Providence, RI, informs the Board that he represents the applicant Mr. and Ms. Molhotra.

Attorney Cox informs the Board from the outset that he has already advised his clients that they should be prepared to be lambasted. Being quite frank with the Board, when initially contacted he informed Mr. Molhotra that his odds were not very good. However, after being begged to visit the premises in order to appreciate the environment within which the business has been operating, he began to have a better understanding. In fact, some of the members have toured the facility, so that they would have a better understanding. The interior layout and manner in which the operation is currently being conducted explains why expansion is necessary. The applicant has submitted a rather detailed plan illustrating the existing constrained floor-layout. Although, initially there was a retail copy component, the predominant operation has always been wholesale print production. The applicant has never had any problems with his neighbors. Albeit, a use variance application, if the relief were to be

granted, it would cure a number of existing dimensional deviations, inclusive of deficient off-street parking. The Planning Department asked for certain information and the property owner is prepared to address those issues. The Board has been furnished all of the requisite plans – front salon layout as well as rear production area. The reason why the production area cannot internally expand is because the central portion of the facility has a height elevation differential of four (4) to five (5) feet – you must actually walk-up and then back down between the front and rear portions of the facility. The referenced area cannot be used as storage because the operation is dealing in paper volumes weighing in the tonnage – it is simply impossible to accomplish the job and have to go up and down stairs. Without being insulting, because it was a stupid move to proceed with construction prior to obtaining all the necessary approvals, it is nevertheless the very reason for why he should be approved. The area in which construction has commenced is also occupied by two (2) storage containers. If allowed to complete the project, the unsightly storage containers will be unnecessary and removed from the property. In turn, it will open up the referenced area for additional parking and allow the exterior – as facing the plaza – to be aesthetically improved. A portion of the rear is already vinyl-sided in a cream-color. The goal is to continue the vinyl-siding onto the new addition and then color the entire building in a similar color. The overall goal is to continue operating from the subject premises – preferring to maintain his primary headquarters in the City of East Providence. The sole expense of moving the primary copying

machine would be upwards of \$100,000. However, without the ability to expand, he simply has no other on-site options. He was initially brought to the subject property with the assistance of the City, although he will allow Mr. Molhotra to fully explain that aspect of his argument. He has been successful and continues to grow. He is now up to 13-employees, with an annual payroll of approximately \$500,000.

Vijay Malhotra, 150 Newport Avenue, East Providence, RI, subject petitioner, is properly sworn in.

Mr. Malhotra provides the following information in response to questions from legal counsel.

Mr. Malhotra informs the Board that in approximately 1994 he relocated his business from Central Avenue in the City of Pawtucket. The property consisted of two (2) separate parcels. When he purchased the property, the front building which was addressed 150 Newport Avenue, had been used as a breakfast restaurant for many years, albeit the referenced use had since been abandoned for several years. The rear property, addressed 1 Taylor Drive, had been a dance studio and the rear portion of the property was used for the storage of construction equipment and materials by the owner's brother. His intention was to purchase the two (2) properties, merge the two (2) buildings, and use them for his copy production business.

The combination of facilities would realize the square footage

needed to conduct his copy business, with the predominant land use being wholesale copying for large industries. They receive financing from both private lenders and in addition approximately \$125,000 from the City of East Providence. Subsequent to obtaining financing, the two (2) buildings were merged – the A-Frame portion used for retail copying and office space. The retail was operated for approximately five-years, but was not economically feasible. They wholesale portion has grown exponentially, albeit many similar businesses have not survived. They have also expanded their employment base from ten (10) to fourteen (14) employees. The bulk of the business is out-of-state – primarily catering to major industries. They also cater to some State government institutions. He caters to several hospitals in Connecticut and Massachusetts. The ability to move bulk paper and finished product has become a considerable problem due to both insufficient space and the interior elevation difference. He has made a commitment to maintain his business within the City; however in so doing the additional space is required otherwise he will be required to move. If he does relocate – he will be relocating to either Connecticut or Massachusetts, because that is where 75% of his business is located.

Attorney Cox explains that the initial proposal in 2004 that was presented to the Board, and eventually withdrawn, was for a much larger, two-story, 2,400 sf addition. It worked out in the best interests of all that it was dismissed, because due to the downturn in the economy for a few years, the cost associated with such a vast

improvement would not have been off-set. The present proposal is to maintain the operation as it has been on-going, however eliminate all of the storage units and move the product into the new addition. There has never been a complaint from the surrounding neighborhood.

Mr. Molhotra continues by noting that presently the majority of off-loading occurs on Taylor Drive, directly over the sidewalk. At times, supplies remains stored on the sidewalk until such time that it can be moved indoors – a problem with suitable storage area. By permitting the referenced improvements, not only will this be avoided, but also all off-street loading can occur from the rear directly upon their premises. No further encroachment will occur on Taylor Drive. The distinctive difference between the present and 2004 proposal is overall size. The present proposal is for a 1,178 square foot addition, or 52% reduction. This is clearly the minimally sized addition that will permit his operation to work effectively.

Attorney Cox notes that even the Planning Department staff report notes that given the surrounding land uses, it does not appear that this will result in any negative impact. He reiterates that moving on an improvement prior to obtaining the necessary approvals does not help the situation because it places both the petitioner, and more importantly, the Board in a very difficult position. Although, not an excuse, due to the desperation experienced by the petitioner to continue his business within the City, he proceeded in an inexcusable

manner – desperate times results in desperate measures.

Chairman Saveory queries the Board, beginning with Mr. Beauparlant. Mr. Beauparlant notes for the record that he was given a tour of the operation by petitioner and counsel, and thanked them because it provided great insight into the present operational difficulties. He inquires if all storage containers will be eliminated if the subject improvement is approved? Attorney Cox responds in the affirmative.

Mr. Beauparlant inquires as to the regulatory requirement for off-street parking? Attorney Cox responds by informing the Board that in regard to industrial operations, parking can either be calculated on the basis of gross floor area at one-space per 270 sf, or by determining the number of employees at peak shift. If based on sf, the total number of spaces would be 28-spaces. However, if based on the peak shift at 16-employees – anticipated at full growth – would only necessitate 8-spaces. In addition, the retail space out front requires one-space per two-employees, also requiring eight-spaces. Therefore, in total, 16-spaces are required, albeit the regulations would mandate vast greater quantity depending upon the manner calculated. Applying such strict standards only realizes excessive parking that is not required – for example, the adjacent plaza. The majority of the business is production-oriented, and should therefore not be based upon square footage, but on employee-based.

Mr. Beauparlant acknowledges that the Planning Department does

support the subject proposal, noting that it will not negatively impact the surrounding character. Clearly, the placement is the most appropriate, and will remove the open storage, a preferable outcome. Had this been properly pursued, he would clearly render the same determination. His only concern, similar to that raised by the Planning Department, is the present visual appearance of the existing facility, and desire to realize a uniform appearance. Mr. Molhotra responds that he will vinyl-side the addition in the same manner as the present shed that was once similarly unpleasing in appearance. He will then carry the same color-scheme by painting the remaining exterior. And finally, add some new greenery throughout the perimeter.

Mr. Beauparlant notes that he personally does not believe the proposal will negatively impact the surrounding neighborhood, provided certain site improvements are implemented.

Mr. Cunha notes for the record that he does not have any questions and/or comments at this time.

Mr. Midgely notes for the record that he does not have any questions and/or comments at this time.

Mr. Croke notes for the record that he has had a long-standing history with the subject property, having sat on the Board when the A-Frame portion was constructed, as well as all subsequent petitions. Other

than that, he has no more to offer at this time.

Ms. Toledo notes for the record that he does not have any questions and/or comments at this time.

Mr. Braga notes for the record that in his personal opinion the primary reason for being before the Board is not objectionable, and in fact would have been much simpler were it not for the present appearance of the entire site. It is presently quite displeasing; especially along the Taylor Drive side. He acknowledges his personal tour of the facility and thanks the petitioner for that review. It was clear that the operation is well run and the added space is much needed. If the entire perimeter were better maintained, it would benefit both the community as well as petitioner alike.

Chairman Saveory inquires as to what is presently stored in the exterior storage containers? Mr. Molhotra responds that it varies at times, but the majority of the time it is filled with raw material, namely paper.

Chairman Saveory inquires if the raw product will be entirely relocated to the interior of the proposed addition? Mr. Molhotra responds in the affirmative.

Chairman Saveory then inquires about the numerous blue bins lining the adjacent property boundary? Mr. Molhotra responds that they

must be maintained because they are used for recycling. However, once all construction is completed, they will be relocated to the exterior area situated between the addition and existing shed. He notes that fencing between his property and the adjacent diner will be installed to screen the operation and blue bins. Chairman Saveory acknowledges that that was going to be a recommendation of the Board, and thanks him for being proactive in that regard.

Chairman Saveory notes that all of the referenced changes will result in the rear area being unimpeded and able to accommodate rear loading. Attorney Cox responds that that was the ultimate goal.

Chairman Saveory acknowledges that in his opinion the relief results from the uniqueness of the subject structures. Clearly, the Board cannot consider the economics of the applicant's argument, although reasonable. He thanks the applicant for making something of the property, given many of the pre-existing constraints.

Chairman Saveory inquires if there is anyone else present who would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Motion by Mr. Beauparlant, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge

of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and not due to a physical or economic disability of the applicant excepting those physical disabilities addressed in RIGL 45-24-30(16).

2. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

3. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the city's comprehensive plan upon which this chapter is based.

4. That the relief to be granted is the least relief necessary.

Mr. Beauparlant hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. In granting the dimensional variances, that the hardship that will be suffered by the owner of the subject property if the dimensional variances are not granted shall amount to more than a mere

inconvenience.

Mr. Beauparlant moves that the dimensional variances be Granted subject to the petitioner fulfilling the following conditions:

- 1. All storage containers to be physically removed from the subject property and not reintroduced.**
- 2. All recycling bins to be relocated to the area tucked alongside the floor area marked by the letter 'M' on the approved general site plan, and screened by solid fencing.**
- 3. The entire exterior of the building to be enhanced as testified to – Matching vinyl-siding on the new addition to match existing shed-like structure and remaining exterior painted a matching neutral color.**
- 4. Petitioner(s) obtaining any, and all, necessary permits.**
- 5. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.**

Chairman Saveory asks Mr. Molhotra if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or

any member of the Zoning Board of Review. Mr. Molhotra responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by Ms. Toledo.

Roll Call Vote:

Mr. Beauparlant - Aye The referenced improvements will not negatively impact

the character of the surrounding neighborhood, and in fact the stipulated improvements will realize a positive impact. The relief to be granted is minimal given existing site conditions.

Mr. Cunha - Aye Concurs that the proposed use is minimal given existing

site and neighborhood conditions.

Ms, Toledo - Aye Hardship clearly results from the unique characteristics of

the subject building.

Mr. Braga - Aye Pursuant to the stipulated conditions of approval, it will be

a win-win situation.

Chairman Saveory - Aye Pursuant to the extensive testimony and stipulated

Conditions.

Dimensional variance unanimously granted, subject to the aforementioned condition(s),

8B. Petition No. 6467: Vijay and Mrinal Malhotra, seek a Use Variance, to retain expansion of a prohibited industrial ‘wholesale printing’ operation, in conjunction with a personal convenience service, otherwise defined as a prohibited land use pursuant to Section 19-98 ‘Schedule of Use Regulations,’ for property located at 150 Newport Avenue, being Map 501, Block 01, Parcel 007.00, and located in a Commercial 3 District.

[NOTE: For specific testimony, refer above under Agenda Item 8A - Petition No. 6466.]

Motion by Mr. Beauparlant, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

- 1. That the use is compatible with neighborhood and surrounding land uses.**
- 2. That the use will not create a nuisance in the subject neighborhood.**
- 3. That the use will not hinder the future development of the City.**

4. That the use does conform to applicable section(s) of the use requested.

Mr. Beauparlant hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. That the applicant would be deprived of all beneficial use of the subject property if the petitioner is required to comply with the Ordinance.

Mr. Beauparlant moves that the use variance be Granted subject to the petitioner fulfilling the following conditions:

1. All storage containers to be physically removed from the subject property and not reintroduced.

2. All recycling bins to be relocated to the area tucked alongside the floor area marked by the letter 'M' on the approved general site plan, and screened by solid fencing.

3. The entire exterior of the building to be enhanced as testified to – Matching vinyl-siding on the new addition to match existing shed-like structure and remaining exterior painted a matching neutral color.

4. Petitioner(s) obtaining any, and all, necessary permits.

5. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.

Chairman Saveory asks Mr. Molhotra if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. Molhotra responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by both Ms. Toledo and Mr. Cunha.

Roll Call Vote:

Mr. Beauparlant - Aye Compatible with surrounding land uses along Newport

Avenue, and should therefore not result in any disturbance.

**Mr. Cunha - Aye The improvement is quite compatible with surrounding
land uses.**

Ms. Toledo - Aye

Mr. Braga - Aye

Chairman Saveory - Aye Will be beneficial for both the applicant as well as the community.

Use variance unanimously granted, subject to the aforementioned condition(s).

IX. PROCEDURES

A. Nominations

Chairman Saveory announces elections, and nominates Mr. Beauparlant for Vice-Chairman.

Mr. Braga seconds the nomination, and is Unanimously approved.

Chairman Saveory then nominates Ms. Toledo for Secretary.

Mr. Braga seconds the nomination, and is Unanimously approved.

B. Indemnification

Chairman Saveory then inquires if the Board is legally protected?

Assistant City Solicitor responds in the affirmative. Any action

against the Board in their capacity as the Zoning Board of Review is protected. If they are sued individually, said suit will proceed to the Trust, and provided the action being sued proceeded from their acting in the capacity as a Board member, they will likewise be protected. The Trust would go to court and have the matter dismissed. The only exception, being as they are not true employees, is any injury related event, such as being involved in an accident exiting a hearing. Provided they are performing their agreed to duties, they will be legally protected. Nothing has changed, although there were allegations to the contrary.

X. ANNOUNCEMENTS

Chairman Saveory then announces that the next regularly scheduled meeting of the Zoning Board of Review will be held on Wednesday, 2 May 2012, at 7:00 PM, in the City of East Providence Council Chambers, City Hall, East Providence, RI.

XI. ADJOURNMENT

Motion to adjourn by Mr. Braga. The motion is Seconded by Ms. Toledo and Unanimously voted to adjourn. Meeting is adjourned at

11:30 P.M.

Edward Pimentel, AICP
Zoning Officer / Clerk

Secretary