

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

**7:00 P.M.**

**SEPTEMBER 20, 2016**

**MEMBERS PRESENT:** Chairman David Rheame, Vice-Chairman Charles LeMay, Arthur Parrott, Christopher Mulligan, Jeremiah Johnson, James Lee, Peter McDonell, John Formella

**MEMBERS EXCUSED:** Patrick Moretti

**ALSO PRESENT:** Jane Ferrini, Planning Department

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**I. APPROVAL OF MINUTES**

A) August 16, 2016

*It was moved, seconded and **passed** unanimously (7-0) to approve the August 16, 2016 minutes.*

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**II. PUBLIC HEARINGS – OLD BUSINESS**

A) Case #8-3

Petitioners: Abigail Kell Sutcliffe, owner, Fred Kell, applicant

Property: 12 Woodbury Avenue

Assessor Plan 163, Lot 9

Zoning District: General Residence A

Description: Add rear porch.

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow 55.94%± building coverage where 25% is the maximum allowed.

*(Postponed from the August 16, 2016 meeting.)*

**SPEAKING IN FAVOR OF THE PETITION**

The applicant Fred Kell stated that he wanted to build a standard porch within all the setbacks. He noted that the house was already a nonconforming use and that the porch would be similar to neighboring porches in the area and would not affect property values.

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

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

**DECISION OF THE BOARD**

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

Mr. Mulligan stated that the lot was an unusually small one and appeared to be oddly configured, and there were unique characteristics to the property because the existing structure seemed to encroach over the setbacks entirely. He said he agreed with the applicant that the modest porch was similar to other add-ons to pre-existing nonconforming structures in the neighborhood. Mr. Mulligan said that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the essential characteristics of the neighborhood would not change and the public's health, safety and welfare would not be threatened. It would result in substantial justice because the loss to the applicant if the building coverage requirements were strictly enforced would outweigh any appreciable gain to the public. The property was already over the 50% building coverage, so any type of improvement to the house would require the same thing. Granting the variances would not diminish the value of surrounding properties because they seemed to have similar amenities, and the project would enhance the property as well as surrounding properties. As to literal enforcement resulting in unnecessary hardship, Mr. Mulligan said there were special conditions to the property because it was a small lot area, trapezoidal in shape, and already had some setback and significant lot coverage nonconforming issues, so there was no fair and substantial relationship between the purpose of the lot coverage requirement because it already exceeded what was required and the change was only a slight incremental increase. Mr. Mulligan said the use was a reasonable one and met all the criteria.

Mr. Parrott said he concurred with Mr. Mulligan and noted that, the way the small deck was proposed, it would not be immediately adjacent to the bulk of the houses on each side, so he couldn't see where it would cause the neighbor any problems. He said it was already a very tight neighborhood, so he could support the application.

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

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B) Case #8-8

Petitioners: James C. Lucy Revocable Living Trust, James C. & Kimberley A. Lucy, Trustees

Property: 127 & 137 High Street  
Assessor Plan: Map 118, Lots 20 & 21  
Zoning District: CD4-L1 and Downtown Overlay Districts  
Description: Construct two-family dwelling unit with parking underneath.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Sections 10.5A41.10A & 10.5A43.31 to allow a three-story building where up to a two-story building is the maximum permitted.
2. Variances from Section 10.5A41.10A to allow the following:
  - (a) A minimum lot area per dwelling unit of 1,200± s.f. where 3,000 s.f. is required.
  - (b) A duplex building type where duplexes are not permitted in the Downtown Overlay District.
  - (c) The minimum ground story to be 8'8"± in height where 11' is required.
3. A Variance from Section 10.1114.20 to allow a 20'± maneuvering aisle where 24' is required.  
(*Postponed from the August 16, 2016 meeting.*)

### **SPEAKING IN FAVOR OF THE PETITION**

The owner Jim Lucy, Attorney Peter Loughlin, and the designer Galen Doscher were present to speak to the petition. Mr. Lucy briefly reviewed the project history and goals and said he collected feedback from the neighbors and various groups, including the Portsmouth Advocates and the Moffatt Ladd House representatives. He reviewed the changes and said he would work with the abutters on some issues.

Attorney Loughlin stated that Mr. Lucy bought the property in 1996, when it already had three units, and said it had changed a good deal. He referenced his July 2, 2016 letter, which pointed out that Mr. Lucy had a right to construct what he proposed and that there had to be a balance regarding land use restrictions. Attorney Loughlin discussed whether or not the Ordinance was arbitrary and unreasonable as applied to Mr. Lucy's property, and he concluded that the applicant did not feel the Ordinance was fair and that it created an unnecessary hardship. He said the application met all the criteria except for Criteria #5, the duplex prohibition, and he discussed the reasons why he felt the prohibition was unfair. Attorney Loughlin also discussed the reasons relief was being sought from the parking aisle and minimum ground floor requirements, the 2-story requirement, and the minimum lot area. He referred to a letter from the National Society of Colonial Dames and said they did not have the right to limit what the owners of surrounding properties did, and he also noted that the Character-Based Zoning District was almost a lot-by-lot rezoning. He concluded that the relief asked for was justifiable.

Chairman Rheaume asked Attorney Loughlin if he would appear before the Planning Board, and Attorney Loughlin said he would do so only for the site review. Chairman

Rheaume also noted that Attorney Loughlin indicated that the upper stories required a 10-ft height but that the property had an 8-ft height, and he said the Planning Department didn't include that in the Public Notice. He asked whether Attorney Loughlin felt it wasn't an issue and that no variance was needed for it. Attorney Loughlin said he had no knowledge of it.

Joseph Almeida of 103-105 High Street stated that he was very familiar with Mr. Lucy's lot and said the neighborhood had seen an amazing amount of change in the last 15 years. He said the proposal was a tasteful one and noted that Mr. Lucy had reached out to his neighbors and would continue the character of the neighborhood.

Barbara DeStefano of 99 Hanover Street said she was anxious to see the existing buildings improved and was 100% in favor of the project.

Bill Healey of 188 Dennett Street said he thought the proposal was very good and that the technical points were minor in the bigger scheme of things.

Attorney Loughlin then showed the 3-dimensional slides to the Board.

#### **SPEAKING IN OPPOSITION TO THE PETITION**

Edie Lacroix of 145 High Street stated that she was a direct abutter and opposed the project. She reviewed her reasons, noting that the Character-Based Zoning restrictions did not allow a duplex, the duplex would block her home's light and air and would be too close to her front porch, and the parking situation would be a problem.

Michael Lacroix of 145 High Street stated that the project would diminish the value of his property as well as surrounding properties. He discussed issues with the proposed six air conditioning units, encroachment, and emergency access and concluded that the project was in direct opposition to the spirit of the Ordinance.

Paige Trace of 27 Hancock Street said she was representing Kerry Vautrot, Chair of the Portsmouth Advocates. She said the Portsmouth Advocates met with Mr. Lucy and provided feedback to make the proposal more compatible, but some of their feedback was not incorporated into the plans, so they were not in support of the project.

Attorney Justin Pasay on behalf of the Colonial Dames and the Moffatt Ladd House stated that he provided a letter to the Board in August and still agreed with the arguments in that letter. He said he disagreed with Attorney Loughlin and felt that the Colonial Dames had a right to insist that abutting properties receive variances if they conformed to City requirements. He felt it was the wrong venue to argue the fairness of the variances and asked the Board to deny the requested variances.

Barbara Ward, Director and Curator of the Moffatt Ladd House and a resident of 16 Nixon Park stated that the addition of the duplex and the fact that it would be larger than the main house would destroy the property's character.

Attorney Pasay returned and reviewed the intensity, character and density issues. He said the project would be a direct departure from the purpose of the Ordinance and that the applicant had the burden of proving that the development would not diminish property values, which he didn't see evidence of. He said the harm to the public would far outweigh any benefit to the Lucys, and he noted that there was no hardship. He also noted that a former owner's request to permit four dwelling units at 137 High Street had been denied by the Board of Adjustment.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Barbara Ward stated that the applicant's two houses were just as historically important as any other property in the area and said the emergency access was dangerous. Bill Healey said the project would spoil the historic view. Edie Lacroix stated that the nonconforming variances didn't apply to her.

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

### **DISCUSSION OF THE BOARD**

Mr. Johnson said he was hard-pressed to find many projects downtown that could comply with every letter of the law for most of the zones. He said that the CD4-L1 was overlaid on several different-sized properties of different uses, and 100% compliance would be unusual in many cases. Mr. Mulligan said he didn't think the resulting density of the project was far out of line from the immediate neighborhood and didn't feel that the 20' travel maneuvering aisle was a huge amount of relief. He said he agreed with many of the statements that what was being proposed was not compatible with the established character of its surroundings, as far as the two-unit townhouse with attached garages placed in the rear of the property and a larger structure than the original historic structures that defined the character of the neighborhood. Although he agreed with Mr. Johnson that strict compliance with the Character-Based Zoning would be difficult if not impossible for a lot of properties in the area, Mr. Mulligan thought the project was very aggressive and out of character with the neighborhood. He said the values of surrounding properties would be negatively affected by the sheer mass of the project and because of the historically-inaccurate character of the new building proposed. Vice-Chair LeMay said he agreed with Mr. Mulligan and felt that the testimony of light and air to the abutting houses was one of the fundamentals that the Board needed to worry about.

Mr. Parrott said he also agreed with the previous comments and noted that 50 feet was larger front to back than either of the other structures, which was not desirable in such a condensed area. He also noted, relative to the overall character of the neighborhood, that the other buildings faced the street, and the applicant's didn't. Also, the applicant was asking for a larger building than was already on the lot and placing it in the historic back yard of the red building. He referred to the CD4-L1, the regulations indicating shallow front yards and shallow-to-medium side yards with variable private landscaping. He said that was what the District was supposed to be all about. He said the project proposed no

front yard. The side yards were a narrow 4-5 feet of space on one side and air conditioning units on the other, and the renderings showed no proposed landscaping. In terms of compliance with the character of the District, he felt it wasn't even close. Mr. Parrott said another concern was diminution of property values and agreed with the experts who said the project would affect the next-door property's light and air because the proposed house would be very close and was tall. Mr. Lee stated that the 2-story building going to a 3-story building was a big stretch and that placing a duplex in that area was not permitted. Mr. McDonnell said there was persuasive testimony from the opposing citizens that there would be a diminution of value in properties.

Chairman Rheume said the Character-Based Zoning District was established to keep patterns and styles of buildings and uses and not result in massive transitions. He said he had been involved in a lot of Character-Based discussions and work, and he noted that it was very detailed and that the Board had to be careful not to confuse that specificity with the accuracy of the information. He said the information could be precise but may not be entirely accurate for the specific property, and it was the Board's responsibility to look at the requirements. He said the Character District goals were to ease the transitions and felt that the application addressed most of the boxes. He thought the project compared favorably in terms of density and lot area per dwelling unit to with properties across the street and in The Hill. He discussed the minimum ground story height and maneuvering capability and felt they were okay. However, he said he struggled with the height and felt that adding on the extra story made the structure feel much larger than the two older homes and would impose too much on the two neighboring buildings.

## **DECISION OF THE BOARD**

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

Mr. Mulligan said he would incorporate his previous comments. He said the project was contrary to the public interest and the spirit of the Ordinance because the essential character of the neighborhood would be altered. The 2-unit townhouse would not be in keeping with the neighborhood, and the new building would be larger than the original historic structure. He said the variances if granted would diminish the value of surrounding properties, especially the value of the property to the north, which would be negatively impacted by the size and increased scale. He felt that what was being proposed was not historically accurate. He said all five of the criteria needed to be satisfied, and those two criteria were not. He said he didn't think that granting the variances would result in substantial justice because the Board had to weigh the applicant's loss if not allowed to proceed with his project against the gain to the public, and as stated numerous times, they had a fairly comprehensive Ordinance that was enacted with significant public input, and it was a reflection of the public's interest in how that particular zone was to be developed. He felt that, to simply say it wasn't fair or not equitable because the rules were changed was not a persuasive argument.

Vice-Chair LeMay said the Board, with respect to hardship, had not heard much persuasion, particularly in terms of characteristics of the properties to the variances being requested, and he felt that criteria was not met either.

Mr. Johnson said he would reluctantly support the motion because he thought the project was a bit aggressive but also felt that the requested variances were minimal. He said he agreed with Mr. Mulligan about the character of the neighborhood but also saw a huge hotel across the street. He said a revised proposal would be better.

Chairman Rheume stated that he would support to motion somewhat reluctantly as well because he felt there was merit to the proposal but that it seemed a little too large relative to the history structures around it. He said he understood the compromises and improvements but felt that the project would not keep the character of the neighborhood and the spirit of the Ordinance, and he didn't see a hardship fully expressed. He said the applicant, however, made a good case that he wasn't far away from the new Ordinance.

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

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### **III. PUBLIC HEARINGS – NEW BUSINESS**

- 1) Case #9-1  
Petitioner: 393 New Castle Avenue LLC  
Property: 390 New Castle Avenue  
Assessor Plan 207, Lot 6  
Zoning District: Single Residence B  
Description: Raise existing structure 18" and convert to dwelling unit.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
  1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
  2. Variances from Section 10.521 to allow the following:
    - a) 96'± continuous street frontage where 100' is required.
    - b) A lot depth of 40'± where 100' is required.
    - c) A rear yard setback of 2'± where 30' is required;

Chairman Rheume stated that some information was provided about concerns with Fisher vs. Dover on a 1987 application that was denied. It was indicated that the same application was being put forward and that Fisher vs. Dover should apply. After discussion, the Board decided to not make a motion to invoke Fisher vs. Dover.

### **SPEAKING IN FAVOR OF THE PETITION**

The applicant Mark Hepp stated that his attorney met with the City Attorney and was told that the previous two owners did not get building permits. He said he also owned the

property across the street and gave a brief history of the two properties. Mr. Hepp said the lot was small and unique and that the footprint or density would not change. He also said the neighbors were favorable but some had issues with parking.

In answer to Vice-Chair LeMay's questions, Mr. Hepp said the property had never been flooded and that there was enough to salvage but that it just needed to be raised up. In answer to Mr. Mulligan's questions, Mr. Hepp said the foundation was brick and that the building was currently used for storage. He said it had no plumbing but had water.

In answer to Mr. Parrott's questions, Mr. Hepp said he had not investigated whether something could be built on the foundation and that the structure did not have a basement. He also said he didn't yet have an analysis from a certified structural engineer.

Chairman Rheaume noted that the 20'x14' building was a micro apartment and asked about the floor plan. Mr. Hepp said he only needed a 5'x7' area for a full bath and kitchenette and the rest would be open space. Chairman Rheaume asked whether the tiny structure was worth rehabbing and Mr. Hepp said they could also use it as an overflow space for their children but that it would meet the criteria for a studio.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Attorney Bernie Pelech was present on behalf of the abutter Pamela Hall of 4 Pleasant Point Drive. He stated that Ms. Hall had not received notice of the application until the day before. He said he reviewed the 1987 files when the one-car garage was denied and found that the City Attorney had issued a cease-and-desist order to get rid of the tenants. He said the reapplication, rehearing, and appeal were also denied. Attorney Pelech concluded that it was the same application and that Fisher vs. Dover would apply. He also said it was improperly advertised. He suggested that the application be continued so that the Fisher vs. Dover issue could be reviewed. He also said the criteria were not met.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

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

### **DISCUSSION OF THE BOARD**

Chairman Rheaume noted the error in the advertisement. Mr. Mulligan said it was unfortunate but was a subsection of the section that was advertised, so he felt that anyone would understand what was happening. Ms. Ferrini said that the same explanation was discussed by the Planning Department and she suggested that the former application be reviewed relating to the Fisher vs. Dover issue. The Board further discussed it. Vice-Chair LeMay asked whether it was a change in use, seeing that the structure had not been a residence for years. Chairman Rheaume said it was a permitted use in the SRB and didn't require special exception, but he felt it invoked a number of concerns.



Vice-Chair LeMay said the Board should review the record and see whether Fisher vs. Dover applied.

*Mr. Parrott moved to **continue** the application to the October meeting.* City files as well as any legal issues could be reviewed so that a determination could be made on the applicability of Fisher vs. Dover. This would also allow time to give proper notification to the neighbor and have the Planning Department check the abutter notification procedure.

*Vice-Chair LeMay seconded the motion.*

Chairman Rheume said the Board also needed a general layout of what the applicant planned to do with the space. Mr. Parrott agreed and said he also wanted to add the fact that the Planning Department should re-advertise the ad.

*The motion to continue **passed**, with 5 in favor and Mr. Mulligan and Mr. Formella voting against the motion (5-2).*

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Due to the late hour, Chairman Rheume asked for a motion to continue the meeting past the 10:00 deadline.

*Mr. Mulligan moved to **continue** the meeting, and Mr. Parrott seconded. The motion **passed** with all in favor, 7-0.*

2) Case #9-2

Petitioners: Gary M. & Marcia D. Baker

Property: 389 Lincoln Avenue

Assessor Plan 134, Lot 17

Zoning District: General Residence A

Description: Replace and expand rear deck.

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow 32.3%± building coverage where 25% is the maximum allowed.

### **SPEAKING IN FAVOR OF THE PETITION**

Timothy Hron representing the owners Gary and Marcia Baker reviewed the criteria and said they would be met.

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

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

### **DECISION OF THE BOARD**

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

Mr. McDonell stated that it was a modest improvement in a densely packed neighborhood. He said the increase in lot coverage was small and that the lot was large compared to some of the other nearby lots. He said granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because it would not alter the essential character of the neighborhood nor threaten the public's health, safety and welfare. There would be no harm to the general public or other individuals. Granting the variances would not diminish the values of surrounding properties and would most likely enhance them. Relating to the special conditions of the property, Mr. McDonell said it was a large lot and a small increase in building coverage, and there were special conditions that distinguished the property from others in the area. He said it was slightly over the required building coverage but not by much.

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

Chairman Rheume said he would support the motion and noted that the house was on the far right hand side of the lot and created a feel of open space.

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

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- 3) Case #9-3  
Petitioners: Robin M. Silva Revocable Living Trust, Robin M. Silva & Mark S. Anderson, Trustees.  
Property: 25 Hawthorne Street  
Assessor Plan 133, Lot 36  
Zoning District: General Residence A  
Description: Construct a 9.5'± x 20'± rear addition with a 5.5'± x 9.5'± side porch.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from 10.521 to allow a 7'± right side yard setback where 10' is required.

### **SPEAKING IN FAVOR OF THE PETITION**

The architect Anne Whitney representing the applicants stated that she gave the Board a document noting that the abutters approved the project. She reviewed the criteria and said they would be met.

Chairman Rheume asked whether the structure at 125 Hawthorne Street closest to the addition was a garage, and Ms. Whitney agreed.

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

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

### **DECISION OF THE BOARD**

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

Vice-Chair LeMay stated that the application was straightforward and would not change the nature of the neighborhood. He said granting the variances would do substantial justice and would not be outweighed by any harm to the general public. He said the encroachment was tiny and the relief was small, and he noted that the encroachment was on the garage. He said there was no evidence that granting the variances would diminish the value of surrounding properties and that enforcement of the Ordinance would result in unnecessary hardship. He said the lot was oddly shaped, and to deny the variance because of that would be unreasonable.

Mr. Johnson said he concurred with Vice-Chair LeMay and had nothing to add.

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

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- 4) Case #9-4  
Petitioners: Thomas J. & Christine W. Casa  
Property: 6 Dwight Avenue  
Assessor Plan 250, Lot 53  
Zoning District: Single Residence B  
Description: Construct a 12'± x 30'± rear deck.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.521 to allow 21.33% building coverage where 20% is the maximum allowed.

Mr. Parrott recused himself from the vote.

### **SPEAKING IN FAVOR OF THE PETITION**

The applicant Christine Case stated that the deck would be a minimal increase in the total coverage allowed and would conform to the neighborhood. She also said the deck would allow her family to enjoy the irregular backyard. She reviewed the criteria and said they would be met.

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

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

**DECISION OF THE BOARD**

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

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because the essential characteristics of the neighborhood would not change and the public's health, safety and welfare would not be threatened. He said the deck would be well screened from the nearest property by vegetation. Granting the variance would result in substantial justice because, if denied, the loss to the applicant would not be counterbalanced by any benefit to the public. The values of surrounding properties would not be affected and in fact would benefit from the project. Mr. Mulligan noted that several properties had similar decks. As for unnecessary hardship, the special conditions of the property and the configuration of the windows in the house required that the deck be sited and sized in a certain manner, so there was no fair and substantial relationship between the purpose of the 20% requirement and its application to the property. He felt that the use was a reasonable one in a residential neighborhood and that the applicant made a good case of why it was necessary and desirable for her family to enjoy the backyard.

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

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

- 5) Case #9-5  
 Petitioner: Amba Realty LLC  
 Property: 806 Route One By-Pass  
 Assessor Plan 161, Lot 43  
 Zoning District: Business  
 Description: Allow a second free-standing sign on a lot.  
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.1243 to allow two free-standing signs on a lot where only one free-standing sign is allowed.
- Sign One (left side of lot)

2. A Variance from Section 10.1253.10 to allow a 4'± setback from the front lot line where 20' is the minimum required.

Sign Two (right side of lot)

3. A Variance from Section 10.1251.20 to allow a sign area for a free-standing sign of 120± s.f. where 100 s.f. is the maximum sign area allowed.
4. A Variance from Section 10.1253.10 to allow a 12'± setback from the front lot line where 20' is the minimum required.

Mr. Parrot resumed his voting seat, and Mr. Mulligan recused himself from the vote.

The applicant was not present.

### **DECISION OF THE BOARD**

*Mr. Johnson moved to **postpone** the application to the October meeting, and Mr. Parrott seconded. The motion **passed** with all in favor, 7-0.*

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6) Case #9-6

Petitioners: Cynthia Caldwell & Linda Petersen

Property: 147 Martha Terrace

Assessor Plan 283, Lot 8

Zoning District: Single Residence A

Description: Reconstruct and expand front entrance.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
  2. Variances from 10.521 to allow 19.3%± building coverage where 10% is the maximum allowed.

Mr. Mulligan resumed his voting seat.

### **SPEAKING IN FAVOR OF THE PETITION**

The owner Cynthia Caldwell stated that she wanted to remove the existing entryway because it was inadequate and unsafe. She wanted to expand the entryway by adding an 8'x16' landing with a shed roof, which would improve the look of the front of the house.

Mr. Johnson asked whether the lot coverage included the removal of the shed, and Ms. Caldwell said it didn't, noting that the shed was removed in 2006 and the increase was from one deck to the new deck.

Mark Herholz of 126 Martha Terrace stated that he lived across the street and was also a proxy for Adam and Frances Price of 127 Martha Terrace. He said the project would make the house safer and more esthetically pleasing and would have no adverse effect on surrounding property values. He said he and the Prices were in full support.

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

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

**DECISION OF THE BOARD**

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

Mr. Johnson said the application was straightforward and that, even though it seemed like a lot, it was a pretty minimal request compared to what existed. He said it was a tasteful design and would add something to the front esthetic as well as update a code compliant issue. He said that granting the variances would maintain the character of the neighborhood, would pose no threat to the public's health, safety and welfare, and would observe the spirit of the Ordinance. Substantial justice would be done because there would be no benefit to the public if the variances were not granted. Granting the variances would not diminish the surrounding property values because the small addition would be a tasteful one and would remedy a cumbersome and non-code compliant entry issue as well as add value to the property and surrounding properties. As for literal enforcement resulting in unnecessary hardship, Mr. Johnson said the front entry was not easily usable and, even though a bigger front deck would be added, it wasn't over the top and would provide a safer and more useful entry to the property.

Vice-Chair LeMay concurred with Mr. Johnson and said he had nothing to add.

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

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- 7) Case #9-7  
Petitioner: Travis Therrien  
Property: 1 Marjorie Street  
Assessor Plan 232, Lot 32  
Zoning District: Single Residence B  
Description: Enclose existing nonconforming deck.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.521 to allow a 3'± right side yard

setback where 10' is required.

### **SPEAKING IN FAVOR OF THE PETITION**

The owner Travis Therrien stated that he wanted to enclose a nonconforming deck and make it into a mudroom. He reviewed the criteria and said they would be met. He also gave the Board copies of a letter of support from an abutting neighbor.

In answer to Mr. Mulligan's questions, Mr. Therrien said he would enclose the existing deck and that it would be 4-1/2 feet higher because the deck had a 6' fence on it.

Chairman Rheume asked how old the deck was. Mr. Therrien said there was no record of it but thought it looked newer than most of the decks on the other houses. Chairman Rheume said it was a concern that the previous owner who installed the deck had not gone to the Board. He noted that the new mudroom would be oddly situated and asked whether people would go in the back to enter the house. Mr. Therrien said there was more room in the back for the deck and that he planned to do a walkway leading up to it.

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

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

### **DECISION OF THE BOARD**

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

Mr. Mulligan stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the additional living space would be very small and would take advantage of an existing structure. Whether or not the deck was properly permitted at the time, the setback relief would be required anyway because the main structure imposed into the setback. He said it was simply continuing that nonconformity and would not alter the essential characteristics of the neighborhood nor threaten the public's health, safety and welfare. Mr. Mulligan stated that granting the variances would result in substantial justice because the loss to the applicant if not allowed would outweigh any benefit to the public. The value of the property would be increased and would have a positive effect on values of surrounding properties. As for the literal enforcement resulting in an unnecessary hardship, Mr. Mulligan said it was an existing nonconforming structure that already encroached in the side yard, and the project was modest and would convert the deck into a livable space as a mudroom.

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

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

**IV. OTHER BUSINESS**

No other business was presented.

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**V. ADJOURNMENT**

*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 11:07 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary