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

7:00 P.M. **JULY 18, 2017**

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Charles LeMay, Jim Lee, Patrick Moretti, Chris Mulligan, Arthur Parrott, Alternates: Peter McDonell, John Formella

MEMBERS EXCUSED: Jeremiah Johnson

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) June 20, 2017

*It was moved, seconded and **passed** unanimously to accept the minutes as amended.*

B) June 27, 2017

*It was moved, seconded and **passed** unanimously to accept the minutes.*

II. OLD BUSINESS

A) Request for One-Year Extension of a Special Exception and Variance granted for property located at 89 Brewery Lane.

Chairman Rheaume stated that the applicant was unable to secure a building permit, so it was reasonable to ask for a one-year extension.

*Mr. Mulligan moved to **grant** the request for a one-year extension, and Mr. Moretti seconded.*

Mr. Mulligan stated that the reasons set forth in the applicant's request were self-explanatory and germane to what was requested and that he was comfortable granting it.

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

DECISION OF THE BOARD

*The motion **passed** by unanimous vote, 7-0.*

III. PUBLIC HEARINGS – NEW BUSINESS

Alternate Mr. McDonell assumed a voting seat.

1) Case 7-1
Petitioners: Chance & Edward Allen
Property: 88 Sims Avenue
Assessor Plan: Map 232, Lot 131
Zoning District: Single Residence B
Description: Construct a 14.5'± x 13.5'± right/front addition with a 21± s.f. deck
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a 26.5' front yard setback where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

Phelps Fullerton of Fullerton Associates was present on behalf of the applicant. He reviewed the petition, noting that the proposed addition would encroach 3-1/2 feet into the front yard setback.

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

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

DECISION OF THE BOARD

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

Mr. Mulligan stated that the proposed project required a modest variance for the front yard setback and that granting the variance would not be contrary to the public interest or the spirit of the Ordinance. He said the essential character of the neighborhood would remain residential, and the public's health, safety and welfare would not be impacted by the very modest addition that wouldn't have much of an encroachment on the front yard setback. Granting the variance would result in substantial justice because there would be no gain to the public if the variance were denied that would be outweighed by the loss to the applicant; the applicant couldn't realistically conform to the front yard setbacks due to the unusual shape of the lot and the 100-ft wetlands setback. He said granting the variance would not diminish surrounding properties. As for hardship, he said that more than half of the property was wetlands and, added with the front yard setback, there was a zero building envelope, so the property had special conditions that distinguished it from others. He noted that the property already intruded onto the front yard

setback as well as another portion of the structure, resulting in no fair and substantial relationship between the purpose of the front yard setback requirement and its application to the property. He said the use was a reasonable one, a residential use in a residential zone, and met all the criteria.

Mr. McDonell concurred with Mr. Mulligan, adding that the petition fit into the unnecessary hardship test as well as the alternative test, owing to the special conditions of the property. He said it couldn't reasonably be used in strict conformance with the Ordinance, so the variance was necessary and was a reasonable expansion of the existing building.

*The motion **passed** by unanimous vote, 7-0.*

Mr. Mulligan recused himself from this petition. The alternates Mr. McDonell and Mr. Formella assumed voting seats.

2) Case 7-2

Petitioner:	Cutts Mansion Condominiums
Property:	525 Maplewood Avenue
Assessor Plan:	Map 209, Lot 85
Zoning District:	General Residence A
Description:	Create two lots where one exists.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 4,506 s.f. where 7,500 s.f. is required.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present to speak to the petition on behalf of the applicant. He reviewed the history of the property and said it was a unique property with special conditions and three times larger than any other property in that district, with numerous elevations. He said the applicant wanted to subdivide the lot and was in the process of renovating the Cutts Mansion to reduce the number of units from eight to six, leaving a total of ten residential units on the lot. Attorney Pelech reviewed the criteria in detail and said they would be met. He also noted that he had attached the Court Order to the application as well as an old tax map, on which he outlined the GRA District and highlighted the SRB zone. He said that, out of the 62 lots in the SRB zone, only 13 complied with the lot area per dwelling unit. In the GRA District, he said that roughly 50% did not comply as well.

Mr. McDonell noted that Attorney Pelech had said that the petition was asking for a variance for the lot area per dwelling unit, and then the lot would be split. He asked about any construction on the new lot. Attorney Pelech said that the applicant had no plans for the new lot but was considering doing a pedestrian/bike path easement to connect Maplewood Avenue to the Albacore Museum. Mr. McDonell said the argument could be made that by allowing the lot to be divided, increased density could be placed on the two lots that could alter the essential character of the neighborhood. Attorney Pelech said that using that rationale would be

speculative because there was no proposal to build anything, and to base a decision on something that may or may not occur wouldn't be in the best interests of the Board or the applicant.

Mr. Lee asked why the applicant had to subdivide the lot if he wanted to grant an easement to the Albacore Museum. Attorney Pelech said that under condominium law, the owner had the option to declare withdrawable land. He said that when the mansion was made into condominiums several years ago, the portion that would be subdivided was designated as withdrawable land, which would allow the owner to withdraw it from the condominium and allow him to work with the City and the Albacore Museum. Without it being withdrawn, he said the decision would become that of the condominium association rather than the owner's decision.

Mr. Lee asked where the access to the proposed lot would be. Attorney Pelech said that it might be off Maplewood Avenue, via an easement over the existing property, but he thought it would probably be somewhere in the vicinity where it was proposed before, but not in the same exact location because the Board hadn't liked that location.

Chairman Rheaume noted that the applicant was presenting himself as the owner of the Cutts Mansion Condominiums but that it used to be known as New England Glory. He asked what the difference was in the nature of the two entities. Attorney Pelech said the Cutts Mansion Condominium Association owned the common land surrounding the existing buildings, with the exception of the withdrawable land, and that New England Glory was the majority condominium owner that owned the building itself, so they had over 50% interest in the condominium association. Chairman Rheaume asked whether the reduction of units in the main building from eight to six was irreversible at that point or just a plan. Attorney Pelech said the building permit application had been submitted.

The owner/applicant Gary Dodds stated that he had not filed the actual permit for the building because he wanted to create a 3-story veranda. He noted that the top floor was one unit, which would necessitate an elevator, and he was waiting for the project engineer to submit the plan and the permit. He said they would then work on the interior. Mr. Dodds said he spent a lot of time renovating the1805 mansion and wanted it to look historic. He submitted three photos of the mansion to the Board, explaining that he had cleaned the property up and was trying to preserve the building. He added that he had lost some things when the bridge when up and was asking for other items to compensate for it.

Chairman Rheaume asked whether the eight units were occupied. Mr. Dodds said there were actually nine units, one of which was an office. He said the carriage house used to have five units that were reduced to four, so the total number of units would be 10. Chairman Rheaume asked whether there were more than six people occupying the units, and Mr. Dodds agreed.

SPEAKING IN OPPOSITION TO THE PETITION

Johanna Lyons of 18 Cutts Street said the property's current density was 6,724 square feet per unit and her lot was 6,000 square feet. She pointed out that ten units were on a lot of 4,506 square feet per unit, less than what was presently allocated. She said she checked with the Inspection Department and found that no building permit had been issued for the work. She

requested that if the subdivision were granted, it be conditional and that the number of units be reduced. She also noted that the owner did not indicate how the second lot size was determined, how it would be accessed, or its future use, potentially creating a lot without legal access. She noted that an easement for a pedestrian/bike path to connect the Albacore Museum with Maplewood Avenue would create an additional encumbrance on the lot. She pointed out that there was another lot between the Cutts Mansion and the Albacore lot. She felt that the mansion lot density should be increased with additional square footage taken from the new lot to be more in keeping with the neighborhood. She emphasized that the 4,000 square feet was much density than the surrounding lots.

Carey Blake of 2 Beechwood Street said she had concerns about dividing the lower section of the property into a separate lot with no plans to do anything with it because it put an extra burden on the Cutts Mansion to have dramatically reduced square footage per unit. She said the tax assessment indicated that there were only eight units, not 10. She said that if the second lot was separated, it would put the existing 12 units further out of compliance. She said the separate lot could then be sold and the historic nature of the mansion could be erased by a big development next door. She didn't think there was a hardship necessitating the subdivision or that the park idea on the bridge over the bypass was a good one.

Deirdre Wallace of 2 Beechwood Street said she was concerned about safety because subdividing the lot would allow for a driveway going onto Maplewood Avenue, which was already difficult. She also thought that if four units were placed on the separate lot, they would get bigger and not affordable. She said it could set a precedent for the neighborhood.

Grover Marshall of 4 Ashland Street said he was concerned about safety because there were two entrances to the property, one of which ended at Cutts Street and Maplewood Avenue and was unsafe. He also noted that many tenants chose to park on the street rather than the lot.

SPEAKING TO, FOR OR AGAINST THE PETITION

Attorney Pelech said the property directly abutted the Albacore Museum. He said he didn't know why the tenants parked on the street but said it was legal. He thought there were a lot of objections from the neighbors based on speculation as to what would happen on the lot. He pointed out that nothing may happen and that there couldn't be four units unless someone came before the Board. He emphasized that the owner said his goal was to get the Cutts Mansion reduced to six units and get the building permit.

Mr. Dodds said his idea to do a park was a good intent and felt that it would be a safe place to walk through.

Ms. Lyons said she knew there was no building permit for the interior renovations.

Ms. Blake said she heard there were 14 units. She asked Chairman Rheaume if, after a building permit was acquired and units were reduced, the new unit number would be the new number and not some unit number that was there ten years before. Chairman Rheaume said the applicant stated that he had ten units, which was what the approval would be granted on. Ms. Blake said

there was a lot of talk to the Court that the building had already been approved for 14 units and that they could be distributed over the two lots, and she thought the number was a misnomer.

Vice-Chair LeMay referred to the lot line addition and asked what the plan was for access to that property. Attorney Pelech said it would have to be accessed from Maplewood Avenue.

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

DECISION OF THE BOARD

Chairman Rheaume explained that the case previously went before the Board, and when they didn't approve it, it went to Superior Court. He said that 20 pages of decision made up the history of the hardship criteria, and the Court remanded it to the Board and asked that they consider that portion of it. He said the Superior Court indicated that, because a portion of it was upheld, what was proposed was no longer viable. However, he said the Court did not overturn the aspect of creating two lots and the reasons the Board said it didn't have a hardship but sent it back to the Board for reconsideration. He said the applicant was before the Board with something different – the lot line was in the same place as before but the remainder of the proposed use was not there. He also noted that Fisher vs. Dover was not relevant to the application.

Mr. Lee said he didn't know why the applicant wanted to subdivide the lot and make it landlocked and then have to apply for a driveway on Maplewood Avenue. He said he didn't like it before and still didn't like it. Vice-Chair LeMay said he understood that the Court said the Board didn't address the hardship issue on a particular detail, but he felt that the Board had enough other reasons to deny the variance before, primarily the access to Maplewood Avenue. He said that, for the application to come back as a subdivision and for the owner to say that he would figure out access later, when it was a key issue for the lot, wouldn't fly with him. He said that, even if it was used as a park, maintenance would have to be done. He said it was still speculative, but unless there was a purpose for subdividing the lot, there was no reason for the Board to consider it.

Mr. McDonell said the variance was for the entirety of the existing lot but noted that there was a lot being used for residential purposes and a wooded lot, so he wasn't sure about granting a variance to allow a lowered lot area per dwelling unit to be applied to the lot on the west side that was already developed. He noted that the property wouldn't be redeveloped in a different way and that the number of units may go down. He said he struggled with what the Board was being asked to grant and how the neighborhood access to the wooded portion of the lot was relevant.

Mr. Parrott said he agreed with the comments and that, in terms of pure numbers, the proposal was to eventually get to ten units. Therefore, ten units on 80,000 square feet would put them a little over 8,000 square feet per unit, and the requirement was 7,500 square feet, so that worked to make the property in compliance. He said what the Board was being asked to do was take a sharp reduction and create a situation of non-compliance, more so than it presently was, for no reason. He referred to the applicant's statement that there weren't any plans for the future, which he said wasn't a sound reason for the Board to grant a substantial reduction in the square footage

per unit proposal. He said the work that had been done was commendable, but the work on the house and carriage house didn't seem to have a direct correlation to the proposed creation of a new lot. He said the access to the property would be problematic, with the stone wall, the guard rail, and the terrain changes, and he didn't understand the reasoning of why the Board should approve a large reduction in square footage when there was no plan to support it.

Chairman Rheaume said he agreed and didn't know why the Board would give up relief for the zoning when they didn't know what was being proposed. He said there was no specific use for it. He noted that the Board had not heard anything more definitive about being under agreement to do something that had a reason for the Board to make a balancing choice between the Zoning Ordinance provisions and what the owner wanted to do. He added that there was a general public concern about making it a separate lot with its access to Maplewood Avenue. He said the Board previously found that the public interest was in ensuring an appropriate way of accessing that property. He said the Board wasn't convinced that time and they didn't have anything before them to make them convinced now. He acknowledged that the proposal would have to go before the Planning Board for site plan review, but he said the Board was being asked to sort of create a blank check and he didn't think it was appropriate, based on their criteria. He said if the applicant returned with a more definitive plan, the Board could consider it. He asked the Board members to pay attention to the hardship test in making a motion to ensure that it was properly covered with regard to the Court case.

Vice-Chair LeMay further discussed what the Court said. He referred to Justice Horton's observation that the property owner's proposed use of the land was reasonable if the desired use had no practical adverse effect on others and did not offend the zoning scheme. He said the Board was being asked to balance those things, and they didn't know what was on one side of the scale. He referred to the court's declaration that the ultimate issue was a balancing of considerations between the private rights of the owner seeking a variance and the public interest of the municipality and the private interests of the abutters. He said that aimed to ensure proper balance between the legitimate aims of municipal planning and the hardship that could sometimes result from the literal enforcement of zoning ordinances.

*Vice-Chair LeMay moved to **deny** the variance for the application, and Mr. Lee seconded.*

Vice-Chair LeMay said he would focus on the issue that had to do with the hardship based on what he had just read, and the fact that the application failed to allow the Board to establish hardship because the alleged hardship was vague. He said the hardship to the applicant was that he wouldn't be able to subdivide the lot, but it wasn't clear what the Board would be granting by allowing that subdivision. He said if the Board considered the entire property as a whole, they could make the judgment as to what the offense was to the zoning and how it balanced the rights of the landowner. He said the Board didn't have a concrete proposal to judge against, therefore they could not find hardship in the case. He said the Board should deny the application.

Mr. Lee concurred with Vice-Chair LeMay and had nothing to add.

Mr. McDonell said that when the Court was discussing the Board's decision of not finding a hardship, they noted the failure to find special conditions on the property and stated that there

were several special conditions. He said the Court's concern was that the Board said there were not special conditions, so there was no hardship, period. He thought one had to say that there were special conditions and that in looking at the additional factors and determining whether there was a hardship, it was reasonable to find that there wasn't one, but it wasn't because there weren't special conditions.

Vice-Chair LeMay said there were special conditions about the property but they would have to justify what was proposed. Mr. McDonell said that it seemed the assumption was that that piece was just skipped. Vice-Chair LeMay agreed.

Chairman Rheaume said he would support the motion. He said that some of the proposals the Board heard were potentially good things for the City and the neighborhood, like the access to the Albacore Museum or some other public benefit. He said it wasn't concrete enough, however, to make a decision, and he pointed out that there was a lot of uncertainty as to the outcome of the property, so it was tough for the Board to do a balancing act. He said the public interest was not particularly served without knowing for certain what was going on. He said there was a public interest that the Board expressed the previous time that was confirmed by the Superior Court, and the access to Maplewood Avenue was a concern for any proposed lot in the area, which the Board needed to consider very carefully. He said he felt that the application failed both of those criteria.

*The motion to deny **passed** by a vote of 5-2, with Mr. McDonell and Mr. Formella voting in opposition.*

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3) Case 7-3

Petitioner:	Deer Street Associates
Property:	165 Deer Street (Lots 2 and 3)
Assessor Plan:	Map 125, Lots 17 & 17.1
Zoning District:	Character District 5 and the Downtown Overlay District
Description:	A surface parking lot as a principal use.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.440 to allow a surface parking lot as a principal use where such use is not allowed.
2. A Variance from Section 10.5A44 to allow a parking lot that does not comply with the requirements of the ordinance.

Mr. Mulligan resumed his seat. Mr. McDonell returned to alternate status and Mr. Formella assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Tim Phoenix was present to speak to the petition on behalf of the applicant. He introduced the company managers Kim and Max Rogers, and the engineer John Chagnon. Attorney Phoenix said the location was the former Gary's Beverage and was where the new

parking garage would be built. He explained what the six lots would consist of and said the applicant's proposal was for using all of Lot 3 and a portion of Lot 2 for a temporary parking lot during construction. He explained that the lot was vacant, didn't comply with the Ordinance, and wouldn't be used for anything for a few years, so the applicant wanted to fill a parking need in the City. He further explained why the variances were needed. He reviewed the criteria in detail and said they would be met.

Mr. Mulligan asked whether any improvements needed to be made. Attorney Phoenix said it was a sea of concrete and had been drained and filled in gravel, issues being reviewed with the Technical Advisory Committee (TAC). In response to further questions from Mr. Mulligan, Attorney Phoenix said it was the owner's decision as to whether or not it would be done for two years. He said the applicant wanted to be a good neighbor by providing parking and thought he could get a short-term, reasonable return on it. He said there were currently 35 private spaces, some of which were used by the eye care business, the bank, and some neighbors.

Mr. Parrott asked whether there were any incentives that the Board was not aware of that weren't addressed that would give the Board and the City some assurance that the building would be built and that the lot wouldn't remain vacant. He reasoned that there was no penalty for not complying and that the applicant couldn't promise that it would be done because a lot of things could change over two years. Attorney Phoenix said anything was possible but Deer Street Associates had demonstrated a strong commitment to the area and wanted to get the hotel approved. He said that was why they self-imposed a time limit on it, so that even if the project stopped, the property was too valuable to be a parking lot forever and that someone would do something on that lot that would have to meet requirements. He said they felt that was enough for the Board to feel comfortable in granting the relief.

Kim Rogers stated that it was likely that they would make some improvements to the lot to make it more desirable to park there and satisfy requirements. He said it wasn't likely that it would be anything more than leased parking due to logistics and expense.

Attorney Phoenix said that the lot may not be unlike the 219 Vaughan Street lot that was vacant and how had a building on it.

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

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

DECISION OF THE BOARD

Chairman Rheaume said there had been other instances downtown, like the Vaughan Street lot and 45 Maplewood Avenue, where the Board had granted relief to allow temporary parking lots. He said both locations seemed pretty close to their plans as well.

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

Mr. Moretti stated that granting the variances would not alter the essential characteristics of the neighborhood or threaten the public's health, safety and welfare. He said it had been a parking lot for many years and wouldn't change anything in that location. He noted that the neighborhood took advantage of parking and thought they would benefit in the long run. He said it would also remove some cars from public accessways until the hotel was built. Mr. Moretti said that granting the variances would observe the spirit of the Ordinance by protecting the neighborhood and the City from things being build that didn't conform to the City's overall plan. He said it was presently a parking lot and would be one for a few years. He said substantial justice would be done because he didn't see anything that would dramatically be changed. He said it would be what it was until something came along that was built on the lot.

Mr. Mulligan concurred with Mr. Moretti and added that there was an unnecessary hardship with the property, given that it was the site of an imminent enormous development. He agreed with the applicant that natural development pressure would likely eliminate any chance that the lot would be a permanent surface parking lot. He said the fact that the purpose of the Ordinance prohibited surface parking as a principal use was to avoid leaving things undeveloped. He said it wouldn't happen in this case, so there was no fair and substantial relationship between the purpose of that Ordinance and the application, and he thought all the criteria were met.

*The vote **passed** by unanimous vote, 7-0.*

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

4) Case 7-4

Petitioners:	Albert and Melanie Sampson
Property:	217 Broad Street
Assessor Plan:	Map 130, Lot 17
Zoning District:	General Residence A
Description:	Reconstruct existing porch.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow 28.3%± building coverage where 25% is the maximum allowed.
2. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed or enlarged without conforming to the requirements of the ordinance.

SPEAKING IN FAVOR OF THE PETITION

The applicant Albert Sampson was present and reviewed the petition, noting that the porch was added on in 1993 and was deteriorating. He said they wanted to replace it with a four-season porch. He also noted that the stairs were heaving, which was a safety concern. He reviewed the criteria and said they would be met.

Vice-Chair LeMay noted that the May 1992 variance stated that, with the screen porch, they would be up to 27.5% coverage. He asked how they got to 28.3%. Mr. Sampson said the Planning Department suggested that he may want to include the covered stairs, so he added it all together. Mr. Mulligan asked whether Mr. Sampson intended to rebuild on the existing porch footprint, and Mr. Samson agreed. Vice-Chair LeMay asked whether the stairs would be in the same spot. Mr. Sampson said they would end up with the same box.

Boyd Morrison of 210 Broad Street said Mr. Sampson was the first owner to make an effort to correct deficiencies in the structure. He said it would be a big improvement.

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

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

DECISION OF THE BOARD

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

Mr. Parrott said the petition was straightforward and striking in how little relief was being asked for. He said it wasn't much more than what already existed on the ground and was in full compliance with setbacks. He said granting the variances would not be contrary to the public interest or the spirit of the Ordinance because the replacement was in kind and would replace a deteriorated and unsafe structure, so it was in the public interest as well as the neighbors' interest. He noted that the spirit of the Ordinance encouraged people to upgrade their properties. Granting the variances would do substantial justice because it was hard to see any public interest in the project. He said it wouldn't diminish surrounding property values and would certainly be a plus. He noted that it was a tight neighborhood, so surrounding properties did count. As for the unnecessary hardship, he said the condition of the structure looked like it was shoddy work and was probably exacerbated by lack of maintenance, so replacing it was the responsible thing to do. He said there were special conditions that it met and easily passed all the criteria.

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

*The motion **passed** by unanimous vote, 7-0.*

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

5) Case 7-5
Petitioner: Colleen M. Cook
Property: 40 Winter Street
Assessor Plan: Map 145, Lot 96
Zoning District: General Residence C
Description: Construct a shed dormer.

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

1. A Variance from Section 10.521 to allow a right side yard setback of 9'5½"± where 10' is required.
2. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed, extended, or enlarged without conforming to the requirements of the ordinance.

SPEAKING IN FAVOR OF THE PETITION

The owner Colleen Cook was present to speak to the petition. She said she wanted to build a shed dormer to fix a nonconforming staircase and bathroom. She showed a photo of the stairway to the Board, noting that the stairs led to the only bathroom in the house. The photo indicated that the stairs were crooked and very steep. She said the shed dormer would raise that area of the house to allow a new staircase. 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 Rheaume 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 neighborhood would not be changed by what was proposed, and the public's health, safety and welfare wouldn't be negatively impacted. He said it would do substantial justice because the loss to the applicant was not outweighed by any benefit to the public. He said the property was already nonconforming due to the side yard setbacks and the most affected neighbor was on the lot line, so the setbacks would always be an issue. He said that granting the variances would enhance the values of surrounding properties because it would allow the dwelling to be more in compliance with the bathroom and stairwell. Regarding the hardship, he said the issues of the property were that the structure was constructed in a way that wasn't acceptable and safe, and there was no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. He said that light, air and so on would not be infringed upon more than they already were. He said the use was a reasonable one and met all the criteria.

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

Chairman Rheaume said he would support the motion. He noted that a dormer could be placed on the opposite half of the attic, but what was forcing the issue was the location of the stairway going up to the attic. He said it made sense, and that the infringement of a half-foot was not a significant impact on the neighboring property.

*The motion **passed** by unanimous vote, 7-0.*

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

6) Case 7-6
Petitioner: Paul Mannle
Property: 1490 Islington Street
Assessor Plan: Map 233, Lot 108
Zoning District: Single Residence B
Description: Interior attached accessory dwelling unit.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a 5' front yard setback for an existing structure where 30' is required.

Chairman Rheaume stated that the application reflected part of the new Zoning Ordinance extending from the State Law regarding Auxiliary Dwelling Units (ADUs) and single residence-type districts, which he said was now allowed. He said the Planning Department interpreted the law as stating that setback requirements could be enforced, and that the requirement for the number of dwelling units and lot area per dwelling unit were things that could not be enforced. . He said that, because the auxiliary dwelling unit (ADU) proposed was in one of the required setbacks, it would come before the Board as if it were a new structure.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant. He said the house was built in 1893, was five feet from Islington Street, and had remained that way for about 120 years. He said a variance was needed for a 5-ft front yard setback.

Mr. Mulligan said the barn seemed sizable and asked whether the applicant considered converting it to a cottage ADU. Attorney Pelech said he wasn't aware of it and thought that, even if the barn was converted instead of the home, the house would still be nonconforming.

Chairman Rheaume asked Mr. Stith what would happen if the ADU use wasn't within a setback. Mr. Stith said the barn would have to be considered separately and the relief determined, but he thought it met all the setbacks. Chairman Rheaume concluded that if the proposal had been for building the ADU in the back portion of the house that wasn't within the setback, it would not have had to come before the Board. He said he didn't want someone putting an ADU next to a neighbor's property and changing the use because it would be a concern to the neighbor and would require the applicant to come before the Board.

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

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

DECISION OF THE BOARD

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

Mr. Mulligan said that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance. He said the public interest had been expressed by the legislature in requiring that ADUs be a permitted use. He said the essential character of the neighborhood wouldn't change and the public's health, safety, and welfare would not be impacted negatively. He said the applicant needed relief for the existing nonconforming condition. He said that granting the variance would result in substantial justice because the loss to the applicant if denied would not be outweighed by the public. He pointed out that the only way the applicant could comply was to move the existing structure, which wouldn't be reasonable. He said the values of surrounding properties would not be diminished because the nonconformity already existed and the density created by the introduction of the ADU was not significant for the neighborhood and was permitted by law. Regarding the unnecessary hardship, he said the special conditions were that the lot was large relative to its immediate neighbors and had the nonconforming structure, so there was no fair and substantial relationship between the purpose of the front yard setback and its application to the property. He said the use was a reasonable one and was actually required to be permitted under State law, and it met all the criteria.

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

Chairman Rheaume reiterated that the Board didn't want someone putting an ADU next to a neighboring house without consent from them. He said the ADU would be invisible to the public and was an encroachment upon the street, with no close neighboring property that it would have a negative impact on, so he felt it was appropriate.

*The motion **passed** by unanimous vote, 7-0.*

IV. ADJOURNMENT

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

Respectfully submitted,

Joann Breault
BOA Recording Secretary