

**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 19, 2017  
To Be Reconvened  
SEPTEMBER 26, 2017**

**MEMBERS PRESENT:** Vice-Chairman Charles LeMay, Jeremiah Johnson, Patrick Moretti, Chris Mulligan, Arthur Parrott, Jim Lee, Alternate John Formella; Alternate Peter McDonell

**MEMBERS EXCUSED:** Chairman David Rheaume

**ALSO PRESENT:** Peter Stith, Planning Department

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**I. APPROVAL OF MINUTES**

- A) August 15, 2017
- B) August 22, 2017

*It was moved, seconded, and **passed** unanimously (7-0) to **approve** both sets of minutes with minor amendments.*

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**II. OLD BUSINESS**

- A) (Case 9-3) Request for Rehearing regarding property located Off Sylvester Street (0 Sylvester Street)

**DECISION OF THE BOARD**

Acting Chair LeMay recommended that the Request for Rehearing be addressed after the variance decision for the same property

*It was moved, seconded and **passed** unanimously (7-0) that the Request for Rehearing be heard immediately after the variance decision.*

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**III. PUBLIC HEARINGS – OLD BUSINESS**

Minutes Approved October 17, 2017

## A) Case 8-3.

Petitioner: SLF Realty Group  
Property: 180 Mirona Road  
Assessor Plan: Map 235, Lot 2  
Zoning District: Gateway  
Description: Replace an internally illuminated free-standing sign.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. A Variance from Section 10.1251.20 to allow a 112± s.f. free-standing sign (including base) where 100 s.f. is the maximum allowed.
2. A Variance from Section 10.1243 to allow a second free-standing sign on a lot where only one free-standing sign is permitted.
3. A Variance from Section 10.1281 to allow a nonconforming sign or sign structure to be altered, reconstructed or replaced without bringing the nonconforming sign into conformity with the Ordinance. *(This petition was postponed from the August 15, 2017 meeting.)*

**DECISION OF THE BOARD**

The Board acknowledged that the petition had been withdrawn by the applicant.

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## B) Case 8-7.

Petitioner: Bartlett Street Condos LLC  
Property: 217 Bartlett Street  
Assessor Plan: Map 162, Lot 32  
Zoning District: General Residence A  
Description: Replace demolished building with a single-family residence.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:

1. A Variance from Section 10.513 to allow more than one free standing dwelling on a lot.
2. Variances from Section 10.521 to allow the following: a) a lot area per dwelling unit of 1,773± s.f. where 7,500 s.f. is required; b) a 3'± right side yard setback where 10' is required; c) a 10'± front yard setback where 15' is required; d) 98.7'± continuous street frontage where 100' is required; and e) 30.9%± *building coverage* where 25% is the maximum allowed. *This petition was postponed from the August 22, 2017. Item 2 e) has been revised to require less building coverage relief than was previously advertised.*

Mr. Moretti recused himself from the petition, and alternates Mr. McDonnell and Mr. Formella assumed voting seats.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernie Pelech was present on behalf of the applicant to speak to the petition. He noted that he was present in January 2016 for the variances allowing renovations to the existing adjacent 4-unit building, and as part of that approval, there was a condition placed that the adjacent one-story church building be demolished because it was unsuitable for residential use. He said that the applicant proposed that it be replaced by a small one-story residence that would be in keeping with the character of the neighborhood. Attorney Pelech reviewed the criteria and said they would be met. He referenced an article about the 4-unit building's history and displayed a photograph showing the proximities of the houses to the street and the fact that there were only driveways between the houses and not grassy areas. He emphasized that there was a substantial reduction in square footage. He showed other renderings and photographs.

Mr. Lee noted that Bartlett Street was a heavily-traveled one and that two cars would have to back out to the street. Attorney Pelech said it had to go to site plan review and might require a different parking arrangement.

Mr. Mulligan said the Board got a second set of renderings in September that showed the proposed structure as a single one, but the ones that were originally submitted were 1-1/2 stories. Attorney Pelech explained that they submitted a much smaller rendering on September 12 in an effort to ease an abutter's concerns.

Mr. Mulligan referred to the tax map and asked what the hardship was that entitled the applicant to go lower than 2100 square feet when the average lot area per dwelling was 3700 square feet. Attorney Pelech said the hardship resulted from the fact that the demolition of the church would leave a gaping hole and create a situation whereby the large lot would not be in keeping with the character of the other lots. He said the large structure would sit in the middle of a large lot with space that could be utilized and made conforming to the neighborhood.

Ben Legare of 217 Bartlett Street stated that he was one of the owners and was concerned about the void next to the house that none of the units opened up to. He said it was unused space, and he was afraid that his units would look into an unused yard. He said that part of the hardship was that it was originally five units but there was a loophole regarding the church. He said he didn't have the budget to landscape the empty corner in front and thought it would be more beneficial to the neighborhood to put a building in that space.

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

Jeremy Ricks said he was representing his wife Jeanne Freeze who owned the 205 Bartlett Street property. He said the applicant was requesting six variances, and he reviewed the history of the application. He said the variance did not appear on the Abutter's Notice and felt that it shouldn't be heard that evening. He noted that the property would receive a total of eight variances if the petition was approved. He submitted a petition signed by several neighbors as well as the January 16, 2016 meeting minutes to the Board. He said the applicant obtained the special exception and the two variances after he agreed to demolish the building and felt that it was a bait-and-switch tactic. He said there was no hardship because all the special conditions of the

property were known when the property was bought. He said the abutters had concerns about parking, runoff, snow removal, and noise and that they were against the petition.

Elizabeth Bratter said she owned the properties at 2 Clinton Street, 48 Clinton Street, and 177 Bartlett Street. She said she had a letter from Tina Slingsby of 25 Clinton Street who opposed the second building, which she submitted to the Board. Ms. Bratter said she was against the petition for several reasons, including the fact that the small house would not be consistent with the 4-unit building, and there would be water and snow runoff problems. She pointed out that several homes on the street did have front lawns.

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

Frances Buck of 89 Clinton Street said the new building would make the area much nicer, but she was concerned about parking and snow issues for the neighborhood.

Attorney Pelech clarified that he represented the church in January 2016 and that there was no bait-and-switch tactic because there were two different applicants and the church personnel were happy that the church would be demolished.

Mr. Ricks said the owner had construction knowledge about land use approvals regarding the property but bought it anyway, knowing that it probably wouldn't be allowed.

Mr. Legare said he was a developer and that the property was advertised as five units. He said he went through the process and found a loophole. As far as the snow removal, he said he redesigned the whole building based on those concerns so that there would be enough area for the snow. He said he would take care of the runoff.

No one else rose to speak, and Acting-Chair LeMay closed the public hearing.

### **DECISION OF THE BOARD**

Mr. Johnson asked whether there was another variance to be sought for the fifth unit, and Mr. Stith said he would verify it. Mr. Johnson said he was typically supportive of an infill project, but it was hard to accept another 4500-s.f. decrease in the dwelling unit entity. He noted that the tandem parking was allowed due to the unique situation of four units. He said it fit the intent of the Ordinance but had a different location for it. He said he also had concerns about creating a residence so close to the property line, which would create hurdles.

Mr. Formella asked what the condition was that was placed on the original variances. Mr. Stith said the church had to be demolished prior to issue of a Certificate of Occupancy for the four units and believed that the posting of the demolition was done. Mr. Formella asked whether the idea behind the condition was for that space to be open. Acting-Chair LeMay agreed, noting that the applicant was willing to do that to get the four units. He said it gave him some light and air as well as greenspace on the side. He said the applicant would get rid of the church that was the 'carrot' that made the rest of the project attractive and was the reason he got the 4-unit density.

Mr. Parrott said that the property was already the beneficiary of a huge amount of relief from the present zoning, noting that the zoning was 7,500 s.f. per unit and the property with the four units was at 2,166 square feet, so less than a third of the lot area per unit called for in the Ordinance was being used. He said the request was to have further reduction to 1,773 square feet, which he thought was an extraordinary amount of relief. He said the lot was less than 100 feet wide and already had a substantial 4-unit building on it. He said that the argument of having a side yard was all of a sudden undesirable, and that a lot of people would consider 3,040 square feet on the side of their property a plus and not a drawback. Regarding the right-side setback, Mr. Parrott said the applicant was asking for three feet and the requirement of 10 feet was small to begin with. With respect to backing out onto the street, he said that any traffic safety person would say that was always very undesirable. He said the Board was asked to approve a situation where two cars would back up on a busy street, which he felt was not a good design. Mr. Parrott said that renovation and upgrade of the building were commendable, but the addition of a small house in such an already-congested area on a sliver of land, the undesirability from a light and air standpoint as well as a public safety standpoint, the fact that it would not be conducive to people who might live in the building, and that fact that they would have no yard space were reasons that he thought it was asking far too much into too small of an area.

*Mr. Parrott moved to **deny** the petition as presented and advertised, and Mr. Johnson seconded.*

Mr. Parrott stated that it was really a difficult argument to say that having the largest lot in the neighborhood was a burden or a disadvantage, and he felt that it was the opposite. He said that folks would like to have more elbow room, and he would consider it a benefit, not a burden. He said it was difficult to see a hardship when one had the largest lot and already had a lot of relief and was renovating a building to be much better for people. He also noted that someone had realized that there was a missing variance related to the total lot coverage. For all those reasons, he moved to deny the application.

Mr. Johnson said he concurred with Mr. Parrott and added that, under the hardship criteria, the petition failed in regard to the setback. He said if the Board wasn't considering a second dwelling and there wasn't a multitude of several setbacks the Board had looked at in the past, they would say it was a large site and that there was plenty of opportunity for the applicant to site the building well within the setbacks he needed. He said there was no justified reason to encroach the 3-ft mark.

*The motion to deny **passed** by unanimous vote (7-0).*

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

Mr. Moretti resumed his voting seat and Mr. Formella returned to alternate status. Mr. McDonnell assumed a voting seat.

1) Case 9-1.

Petitioner: Petition of Melissa A. Raffoni Revocable Trust of 2011, Melissa Raffoni,  
Trustee

Property: 606 State Street  
 Assessor Plan: 127, Lot 21  
 Zoning District: General Residence C  
 Description: Third floor wall extension.  
 Requests: 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 a 4'± right side yard where 10' is required;
2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

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

The contractor Philip Clermont on behalf of the applicant was present to speak to the petition. He noted that he had been before the Board previously for the original setbacks and a change to a spiral staircase. He said there was a discrepancy noted in the architectural drawings and that the Planning Department advised him to ask for relief or corrective action on how the project was framed. He discussed the wall that was reduced and the resulting bump-out issue.

Acting-Chair LeMay asked whether the increase was the width of that or the 2-ft depth from the house. The architect Brandon Holben explained it in more detail. Mr. Clermont further discussed the proportions and explained what the framer did.

Mr. Holben discussed the street orientation. Mr. Mulligan concluded that the affected side was adjacent to the rear neighbor and the parking lot of the side neighbor.

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

No one rose to speak, and Acting-Chair LeMay closed the public hearing.

### **DECISION OF THE BOARD**

Mr. Lee said he drove by the property and felt that the impact was minute to anything. He said he would support the petition.

*Mr. Lee moved to **grant** the variances as presented and advertised, and Mr. Johnson seconded.*

Mr. Lee said that granting the variances would not alter the essential characteristics of the neighborhood because it was such a minor change. There would be no threat to the public's health, safety, or welfare, it would not be contrary to the public interest nor to the spirit of the Ordinance, and substantial justice would be done because the project would correct a mistake that the workman inadvertently made.

Mr. Johnson said he concurred with Mr. Lee. He added that the property was unique, with some of the hardships being the narrow size of the lot and being smaller than the surrounding lots, the house was squeezed in and was an island onto itself, and the change to the setback would not be noticeable. He said that the intent of the Board's previous approval was maintained and that it was equal to or a bit less than the most offending part of the setback, and it was at the setback line that the Board previously approved.

*The motion passed by unanimous vote (7-0).*

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2) Case 9-2.

Petitioner: Arne LLC  
Property: Off Sylvester Street (0 Sylvester Street)  
Assessor Plan: Map 232, Lots 43-1 & 43-2  
Zoning District: Single Residence B  
Description: Construct a single-family home on two merged lots.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including from Section 10.521 to allow a rear yard setback of 22.1'± where 30' is required.

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

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

Attorney Derek Durbin representing the owner was present to speak to the petition. He noted that an application was forwarded the previous month to merge the two lots into one and build a single-family home. He said that all the variances were granted except for the front yard setback, and that the Board said they would be more inclined to grant the variance if the home were moved further back from the property. He said that would require rear setback relief. He noted that the Chase Home abutted the rear and that there was a significant wooded buffer. He said the plans were revised and they were seeking a rear yard setback, which would allow them to get a rehearing on the stipulation regarding site plan review. Attorney Durbin reviewed the criteria and said they would be met. He also asked the Board to reconsider the site plan stipulation if they approved the petition.

Mr. Moretti asked whether something would come into play in the future concerning the rear exit door. Attorney Durbin said there would just be a step out the back door but it would be below 18 inches and would not require additional relief based on its topography.

Mr. Mulligan noted that the application requested to modify the rehearing of the approval's condition and asked whether the Planning Department could approve a stormwater mitigation plan or whether it should go to the Department of Public Works. Mr. Stith said it would likely be approved by the City engineers in the Department of Public Works.

Ariel Sillanpaa of 4 Sylvester Street stated that she lived across the lot and felt that her biggest concern, the front yard setback, was adequately addressed and that she was in favor.

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

No one rose to speak, and Acting Chair LeMay closed the public hearing.

**DECISION OF THE BOARD**

Acting Chair LeMay noted that the Board also had had a motion to waive, modify or rehear the condition of the site plan approval, and since it was attached to variances that the Board worked on last time, they couldn't hear it that night and had to grant a rehearing for it. He said the Board could deal with the variance and then deal with rehearing it to re-evaluate the impact of that variance on the others. Mr. Mulligan said if the Board granted the variance request with the condition that the applicant provide a drainage study that was approved somewhere, they would at least give him the roadmap for moving forward. He thought the Board could also rehear the prior approval as well. Acting Chair LeMay said he couldn't guarantee that the Board would just remove the requirement the following month after the discussion of the site plan review and was concerned that if they put the other restriction on that evening, it might have to be changed the following month. Mr. Johnson said the City wouldn't let the applicant move forward because the paper trail would indicate that the applicant had to go to site plan review. Acting Chair LeMay agreed and said the Board should deal with the requested variance that evening.

*Mr. Mulligan moved to **grant** the variance as presented and advertised, and Mr. Moretti seconded.*

Mr. Mulligan stated that the variance was what the Board instructed the applicant to return with. He said granting the variance would not be contrary to the public's interest or to the spirit of the Ordinance, that the neighborhood's characteristics would not be altered, nor would the public's health, safety or welfare because the rear relief was minor. He said substantial justice would be done because the loss to the applicant would not be outweighed by any public benefit if the Board granted the variance. Granting the variance would not diminish the value of surrounding properties but would enhance them. He noted that the applicant had worked with the neighborhood and he was confident that it would be a positive addition. Relating to literal enforcement resulting in unnecessary hardship, Mr. Mulligan said that pre-existing lots of record were created before the current zoning requirements, therefore relief was required to do anything on the lots. He said the applicant asked for the relief that the Board suggested.

Mr. Moretti said he concurred with Mr. Mulligan and was glad to see that the applicant and the neighbor were able to work out their differences.

*The motion **passed** by unanimous vote (7-0).*

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3) Case 9-3. See A) under Old Business.

The alternate Mr. Formella assumed a voting seat.



The Board addressed the Request for Rehearing after reaching a decision on the variance petition.

*Mr. Johnson moved to **approve** a rehearing to readdress the previous stipulation of a full-blown site plan review for the August-approved variances a 0 Sylvester Street. Mr. Moretti seconded the motion.*

Mr. Johnson said that, based on the Board's conversation, the applicant's willingness to address the Board's previous comments and the stipulation was almost like a fail-safe to make sure that enough people weighed in on the changes that the applicant made that alleviated many of the Board's concerns as well as the concerns of the closest abutter. He said it was worth a rehearing to get their priorities in line and get everything set for the applicant.

Mr. Moretti concurred with Mr. Johnson.

Mr. Mulligan asked for clarification about whether the Board was only rehearing the issue of the condition and not the entire approval. Mr. Stith clarified that the Board would rehear the original petition and could re-affirm their original votes, and modify or remove the stipulation.

Acting Chair LeMay said the Board would just reconsider the condition, not the entire approval, and could narrow down what they wanted to discuss.

*The motion to rehear the condition **passed** by unanimous vote (7-0).*

#### 4) Case 9-4.

Petitioners: Matthew Nolte, owner, Matthew & Kerry Nolte, applicants

Property: 321 Dennett Street

Assessor Plan: Map 160, Lot 40

Zoning District: General Residence A

Description: Relocate an existing second dwelling unit into a separate structure.

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

1. A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where only one free-standing dwelling is allowed.
2. Variances from Section 10.521 to allow the following (a) a 5.75' ± secondary front yard setback (Hunter Hill) where 15' is required; (b) a 9'6" ± rear yard setback (Dennett Street) where 20' is required; and (c) lot area per dwelling unit of 3,705 ± sf. where 7,500 s.f. is required.
3. A Variance from Section 10.1111.20 to allow a use that is nonconforming with respect to off-street parking to be enlarged or altered without complying with the off-street parking requirements.
4. A Variance from Section 10.1112.30 to allow 0 legally conforming off-street parking spaces where four (4) are the minimum required.

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

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

Attorney Derek Durbin was present on behalf of the owners. He stated that the property was located on the corner of Hunters Hill Avenue and Dennett Street and had a two-family building that fronted Dennett Street as well as a carriage house in the rear that fronted Hunters Hill Avenue. He said the owners lived in one apartment and rented out the other. He discussed the parking, which he said was unusual but had been there for as long as City records indicated. He said the street and utilities were constructed outside of that, so there was an encroachment problem. He said nothing else would change except for the relocation of the second dwelling unit because the owners wanted to convert the two-family residence into a single family and relocate the second dwelling unit into the carriage house. He said they also wanted to maintain a rental unit and had to seek setback parking relief due to the change in the carriage house.

Attorney Durbin addressed the Staff Memo comments indicating that the owners would have the option to apply for a garden cottage. He said the carriage house structure did not meet the garden cottage criteria and the applicant would have to seek a significant amount of relief for it and had no desire for a garden cottage. He reviewed the criteria and said it would be met. Attorney Durbin said he included a stipulation that any approval would be conditioned on converting the existing dwelling back to a single-family one and utilizing the carriage house as a second dwelling.

Acting Chair LeMay asked what it took to reconfigure the main house back to a single-family one. The owner Kerry Nolte replied that one door would be opened to reconnect it. Ms. Nolte said she also had a letter of approval from an immediate abutter, which she gave to the Commission. Ms. Nolte said they currently parked in the gravel area and their tenants parked on the street, but it was cut-out parking in front of the house. She said the parking would increase from four to five people. She said it seemed like they were putting a lot into one space, but it would look like open space and would keep the character of the neighborhood.

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

Steve Noel of 33 Hunters Hill Avenue said he was a direct abutter and opposed to the petition because of a stipulation when the building was built that it would not be rented out. He cited other issues, including the fact that it was already dense, parking on the street was a problem, it was a dead-end street and there were snow removal issues. Mr. Johnson said the Board had the stipulations from the 2002 presentation and didn't see the stipulation indicating that it could not be a residence. Mr. Noel said he had been told about the stipulation and was present when the structure was built.

Acting Chair LeMay asked how it would change the parking situation if there were two families living there before and afterwards. Mr. Noel said the project was being presented as a decrease in usage, but he didn't know whether it would be enforced. He said the property could turn over in ten years and have three families, perhaps even an in-law apartment.

Tony Coviello of 341 Dennett Street said he had lived in his home for 20 years and knew the area well. He gave a brief history of the property and asked what was presently allowed under the use of the variance that was granted in the past. Mr. Stith said it was approved as a home occupation. Mr. Coviello asked where it said that one couldn't have residential, and Acting Chair LeMay said that a home occupation was residential. Mr. Coviello asked whether the owners could increase the amount of off-street parking. He suggested that their property be widened for additional spaces because if the carriage house was converted to another apartment, there would be more vehicles. He felt that the application was asking for double the space.

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

Ms. Nolte said they were willing to work on parking but that it would still result in zero legal parking spaces, which wasn't what they needed a variance for. She said they inherited the property's history, and that she had an unused space that would be a good home for a renter.

Mr. Coviello asked whether the petition could be postponed because he received a late abutter's notice. He asked whether it was normal to get such a late notice. Mr. Stith said it was a five-day notification. Mr. Coviello said if the petition was approved, he would like it to be owner-occupied in either one of the units during that time period.

John Hallowell of 361 Dennett Street said the petition wasn't a change to the building or added additional parking, so he was in favor of its approval.

Attorney Durbin said the applicants were willing to work on a better parking solution and that the most suitable place required license from the City Council.

Mr. Mulligan asked how much square footage the existing apartment in the main building had. Attorney Durbin said the house was 2,100 square feet of living area, the renter had the second floor, and the top half was unfinished. Ms. Nolte said her unit was about 1,100 square feet due to overhangs and cutoffs, and the renter's unit was 900 square feet. She said that some of the upstairs didn't have standing space. She said moving the dwelling unit into the carriage house would reduce the second unit's livable space by about 400 square feet.

No one else rose to speak, and Acting Chair LeMay closed the public hearing.

### **DECISION OF THE BOARD**

Mr. Mulligan said that the total number of households wouldn't increase, the physical characteristics wouldn't change, and the ability to meet parking requirements wouldn't change, so he couldn't see what the negative impact would be. He agreed that someone in the future might try to convert the existing house back into multiple units, but they would have to go before the Board. He felt that the concerns that the neighbors articulated weren't strong enough to stop the relief from being given because he didn't think it was that much relief. Acting Chair LeMay agreed, noting that two families were currently using the property and it would be the same later. He said having a house divided into two living units could cause concern in the future but the Board would ensure that the record was clear about what was permitted.

Mr. Johnson suggested a stipulation regarding the total dwelling units on the property. Acting Chair LeMay said that any increase would make the applicant come back, and he thought it was worthwhile that a Certificate of Occupancy be contingent upon converting the first building into a single-family one to make that clear, because if it didn't happen first it might not happen for a long time. Mr. Mulligan said the applicant had acknowledged that.

*Mr. Mulligan moved to **grant** the variances as presented and advertised, with the following stipulation:*

- *That the existing two-family dwelling on the property in the main house be converted to a single-family dwelling prior to the issuance of a Certificate of Occupancy for the carriage house being converted to a residential dwelling.*

*Mr. McDonell seconded the motion.*

Mr. Mulligan stated that granting the variances would not be contrary to the public's interest or to the spirit of the Ordinance because the essential characteristics of the neighborhood would not change. There would be the same number of households, and none of the physical characteristics of the property in terms of dimensions and parking would change. He said it was possible, considering that one of the households would be significantly smaller, that some of the parking concerns might be alleviated. Granting the variances would result in substantial justice because he didn't see what any gain to the public would be. He said all the nonconformities and infirmities already existed and couldn't be met by the applicant. Surrounding value properties would not be diminished because the physical characteristics of the property wouldn't change and the number of households on the property would remain at two, so nothing would negatively affect the value of surrounding values. He said that literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions, including the fact that there was already an existing approved two-family dwelling on the property and two households would remain but be in two separate buildings on the property. He felt there was no fair and substantial relationship between the purpose of the dimensional and parking requirements and their application to the property because the property as it already existed did not and could not meet them. He said those restrictions weren't necessary to achieve the purpose of the Ordinance and that the use was a reasonable one that had existed since the 1980s. He said all the criteria were met and that the variances should be granted, with the stipulation that before the carriage house could be used as a dwelling, the main house be converted to a single-family dwelling.

Mr. McDonell said he concurred with Mr. Mulligan and added that a lot of the abutters' concerns had to do with parking. He said one could speculate what the effect would be, but the applicant was making the second unit smaller and increasing the size of the other one. He said people could speculate about an increase in cars, but it was speculative. He said the Board's concern was whether it was reasonable to permit in an existing two-unit site a second freestanding dwelling, and he thought it was.

Mr. Parrott said he thought it was significant that the number of units was already allowed, but it was just the arrangement that was being changed. He said he could support it because the amount of developed, built, or improved floor space was not changing.

*The motion passed by unanimous vote (7-0).*

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At this point, Mr. Johnson recused himself and left the meeting, and alternates Mr. Formella and Mr. McDonnell assumed voting seats.

5) Case 9-5.

Petitioners: Paul Lanzoni, owner and Paul and Janice Lanzoni, applicants  
Property: 411 South Street  
Assessor Plan: Map 112, Lot 55  
Zoning District: General Residence A  
Description: Attached garage, containing an accessory dwelling unit, and a hallway addition.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:  
1. Variances from Section 10.521 to allow the following: a) a rear yard setback of 6.5'± where 20' is required; and b) 26.4%± building coverage where 25% is the maximum allowed.  
2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

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

Attorney Bernie Pelech was present on behalf of the owner to speak to the petition and introduced the architect Phelps Fullerton. Attorney Pelech said the applicant wanted to demolish the detached garage and replace it with a new one that would be attached to the existing residence with a small hallway. He said the rear yard setback would be reduced by a few inches and the right yard setback would become conforming. He also noted that the open space on the lot would be increased because the impervious driveway would be replaced with pervious surface. He reviewed the criteria and said they would be met. He also noted that an abutter was in support but had to leave the meeting.

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

Derek and Wendy Rolfe of 419 South Street said they were the rear abutters to the property. Mr. Rolfe said they felt that the project was too close to their property and too big, and that it would violate their privacy. Mr. Rolfe said the existing structure was only about 5 feet high at the rear property line, and the proposed structure was 18-20 feet higher and even looked taller than the main house. He said it also had windows that looked into their master bedroom. He said the project would decrease his property values and impact any resale. He also noted that the dimensions were misleading because the 216 square feet did not consider that it was a two-story structure. He said he didn't know what the hardship was and felt that the petition was asking for too much. He also said the size would restrict air flow and distract from the enjoyment of their home. Ms. Rolfe said they were not against people improving their properties and already had

four abutters with additions in the direction of their house, but they were overwhelmed with the project's height and how close it was to their property line.

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

No one rose to speak, and Acting chair LeMay closed the public hearing.

### **DECISION OF THE BOARD**

The Board discussed the petition. Mr. Moretti said that it looked like a very modest addition on paper, but the mass and height of the building with the two dormers was a concern, as well as the fact that it rose above the existing house. He said he understood the ADU issue but the neighbors would be affected. Acting Chair LeMay said if one looked at the existing 6.2 feet where the building was 5 feet tall versus 6.5 feet where the building was 20 feet tall, that was a more substantial impact at the particular point in the lot.

Mr. McDonell agreed that the garage was much higher than existing but pointed out that it was offset from the existing garage and wouldn't be directly facing into the abutter's house.

Mr. Moretti said he understood the design concept but suggested getting the garage off the rear line and moving it down the street a bit so that it didn't come into play. He said an adjustment could be made on the rear setback. He suggested that the applicants make the adjustment and see if the neighbors were okay with it, and then return to the Board. It was further discussed. Mr. Moretti said the garage could be moved forward 2-3 feet to get the 6'5" down. Acting Chair LeMay said that, short of 20 feet, the applicant would need a variance.

*It was moved, seconded, and approved unanimously (7-0) to **reopen** the public hearing so that further questions could be asked.*

Mr. Mulligan stated that the abutters raised a concern about the scale and mass being so close to their property and asked whether there was a reason for siting the new garage where it was and whether it could be slid forward.

Mr. Fullerton said they knew they couldn't slide the garage forward enough to pull it out of the rear yard setback without encroaching into the master bedroom windows. He said the existing garage sat off the rear yard and that the setback was currently 6.2 feet, but the garage height was over 12 feet to the ridge. He discussed the window dimensions, noting that the owner preferred that the double hung windows be small awning windows out of respect for the neighbor but it wasn't included in the plans. He said they could do a 7-ft door for the garage instead of a 6-ft door, which would drop the ridge a foot and bring it within 15 inches to the ridge of the house.

Acting Chair LeMay asked the Board members how they felt about the 7 feet. Mr. Parrott verified that the height of the proposed new garage, from grade to ridge, would be 24 feet plus. Mr. Fullerton agreed, saying that it was 24'2", and that the present house was less than that by 15 inches. Mr. Parrott asked why the addition had to be taller than the existing structure. Mr.

Fullerton said he was trying to keep the pitch of the ADU greater than the ratio of 4” and 12” because if he went less than that, shingle manufacturers wouldn’t warrantee their product.

Mr. McDonell said it seemed like a tradeoff between what the applicant did and what the neighbors would wind up with. He said he knew it was undesirable to pull the garage forward and asked whether it was feasible if it be pulled up into the master bedroom area to the point where they wound up losing another window, to solve the concerns of the neighbors.

Mr. Rolfe said it would present challenges with the house. He suggested pulling it forward and making it smaller.

No one else rose to speak, and Acting Chair closed the public hearing.

Mr. Moretti said he did some quick measurements and found that if the garage was pulled forward in line with the front bathroom wall, there would be a minor encroachment on the left side setback and everyone would wind up in the plane of where the old garage was. He said they would get 9 feet off the back plane, so it would be a 2-1/2’ improvement, even though the tall wall would be in the same plane as where the garage was. Mr. Moretti further explained how a few more inches could be gained and said it would necessitate a stairway. Acting Chair LeMay said they could just take one foot off the door and move it a bit, but he didn’t know if they wanted to coerce it down to the last two inches.

*Mr. Moretti moved to **grant** the variances as presented and advertised, with the following stipulation:*

- *That the garage be moved forward so that it came into the plane and footage was gained in the back so it stayed in the plane with the current garage and would approximate the bathroom wall forward and reduce the garage door height by a foot. The additional foot was to reduce the height of the building.*

*Mr. Lee seconded.*

Mr. Moretti said that granting the variances would not be contrary to the public’s interest. He noted that the neighbors gave their input and the applicant tried to make adjustments to get the ADU unit into the property, which was within the Ordinance. He said it would observe the spirit of the Ordinance because the homeowner could enjoy his property. He said granting the variances would do substantial justice because the owner was trying to get proper car storage and living space above the garage in a way that would minimize the impact to the neighborhood, and he would also remove the garage that wasn’t up to current code. Granting the variances would not diminish the value of surrounding properties because the garage would be modern and up to code, and moving it forward and reducing its height would improve the neighbor’s situation. The hardship was that the detached garage was not up to modern standards and the new garage would be attached and have easier access and living space above it. He said it should be approved.

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

Acting Chair LeMay advised getting numbers on the setback to do their calculations and go forward. Mr. McDonell asked whether the Board was granting a right sideyard setback variance, and Acting Chair LeMay agreed. Mr. Stith said it could be granted less for the rear and more for the right sideyard, but it would have to be noticed. Acting Chair LeMay said it would affect the variance and suggested continuing the petition to the next meeting. Mr. Stith said the applicant could provide the figures and the petition could be re-noticed to the October meeting.

*Mr. Moretti **withdrew** his original motion and moved to **continue** the petition to the October meeting so that the applicant had time to provide further information. Mr. Lee seconded.*

*The motion **passed** by unanimous vote (7-0).*

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## **V. ADJOURNMENT**

*It was moved, seconded, and passed by unanimous vote to adjourn the meeting at 10:15 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary