

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

**7:00 P.M.**

**OCTOBER 17, 2017**

**MEMBERS PRESENT:** Chairman David Rheame, Vice-Chairman Charles LeMay, Jeremiah Johnson, Chris Mulligan, Arthur Parrott, Jim Lee, Alternate Peter McDonell

**MEMBERS EXCUSED:** Patrick Moretti, Alternate John Formella

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

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**I. APPROVAL OF MINUTES**

A) September 19, 2017

*It was moved, seconded, and **passed** to approve the September 19, 2017 minutes.*

B) September 26, 2017

*It was moved, seconded, and **passed** to approve the September 26, 2017 minutes with a minor amendment.*

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**II. PUBLIC HEARINGS - OLD BUSINESS**

A) Case 8-6

Petitioner: Arne LLC

Property: 0 Sylvester Street

Assessor Plan: Map 232, Lots 43-1 & 43-2

Zoning District: Single Residence B (SRB)

Description: Merge two lots and construct a single-family home.

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 the following: a) continuous street frontage of 80.64'± where 100'; b) a lot area and lot area per dwelling unit of 6,713± s.f. where 15,000 s.f. is required; c) a lot depth of 82.2'± where 100' is required; and d) a front yard setback of 21.7'± where 30' is required. A

*petition for this relief was granted with a stipulation on August 22, 2017 and this rehearing regarding the stipulation was granted on September 19, 2017.*

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

Chairman Rheume stated that the site review stipulation was the main issue.

Attorney Derek Durbin representing the applicant was present to speak to the petition. He noted that he previously submitted site plans at the August and September meetings and a letter from the soils scientist relating to the wetlands issue. Attorney Durbin said there would not be drainage issues due to the grade of the property. He said there were no engineering issues that would justify further site plan review. He said the applicant verified that the property was not located within 100 feet of the wetlands. He said he could consider an alternate stipulation that the applicant submit the site plans to the Planning Department or to the Department of Public Works to review storm water mitigation concerns, but he thought that they would have already addressed those concerns. Attorney Durbin asked the Board to remove the site plan relief stipulation and grant the applicant's request.

### **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 stated that he wanted to re-grant the three variances that the Board granted in August, noting that he had made the original motion to approve three out of four variances. He recommended that the Board grant the variances and discuss appropriate stipulations. He said that his motion for a full-blown site review stipulation was overkill for a single-family lot in that case and was convinced the applicant was correct.

Chairman Rheume then read the variances into the record.

*Mr. Mulligan moved to **grant** Variances 1a through 1c as presented and advertised, with the following stipulation:*

*That the applicant present a drainage study to the Department of Public Works' satisfaction that there would not be adverse consequences to the neighbor's yard.*

*Mr. Parrott seconded the motion.*

Mr. Mulligan said he would bring forward the discussion and the reasoning that was articulated at the August 22 meeting. He stated that there were lots of record that had been involuntarily merged and then unmerged, and combined with the applicant's siting the property in such a way that it met all the criteria. He said granting the variances would not change the essential character of the neighborhood and would meet the spirit of the Ordinance as well as the public interest. He said it would result in substantial justice because the loss to the applicant if the Board were to

require that it strictly conform to dimensional requirements would outweigh any gains to the public. He said that granting the variances would not diminish the value of surrounding properties because the new construction would enhance those values. As for literal enforcement resulting in unnecessary hardship, Mr. Mulligan noted that the Board instructed the applicant to go back to the drawing board and push the project backwards towards the rear setback because of its unique location so close to the Chase home, so that there wouldn't be overcrowding or negative impacts that were typically the reasons why the board had all the dimensional requirements that the applicant was getting relief for. He said it met all the criteria.

Mr. Parrott stated that it seemed to be the logical and correct procedure and that he had nothing further to add.

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

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Mr. Johnson recused himself from the vote.

**B) Case 9-5**

Petitioners: Paul Lanzoni, owner, Paul & Janice Lanzoni, applicants

Property: 411 South Street

Assessor Plan: Map 112, Lot 55

Zoning District: General Residence A (GRA)

Description: Attached garage with accessory dwelling unit and hallway addition.

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 the following: (a) a rear yard setback of 8.1'± where 20' is required, (b) a right yard setback of 9.3'± where 10' is required; and (c) a building coverage of 26.4% ± where 25% 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. *This petition was continued from the September 19, 2017 meeting and has been amended with regard to the right side yard and rear yard setbacks.*

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernie Pelech was present to speak to the petition on behalf of the applicants. He reviewed the petition, noting that three changes were made to the plan in response to the Board's previous recommendations: moving the garage forward two feet, reducing the height by 15 inches, and reducing the size of the garage's back windows. He said they now required a right yard setback because the garage was moved forward. He emphasized that the shape and location of the lot were such that the house was built parallel to South Street, so the existing home was skewed on the lot. He said the applicant proposed to move the building forward so that the rear abutters' concerns were addressed. He reviewed the criteria and said they would be met.

Mr. Lee asked what the trees on the plan were. Attorney Pelech said they were arborvitae.

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

Wendy and Derek Rolfe of 419 South Street said they lived behind the applicant. Ms. Rolfe said that the new 20-ft garage with windows would be too close and too tall, would affect their privacy and property values, and that lights would shine into their bedroom windows. They said that 90% of the neighborhood's garages were detached and that they didn't see the hardship. Mr. Rolfe said the 20-ft setback ordinance was there for a reason.

Brett Cooper of 171 Elwyn Avenue said the variance shouldn't be granted because a second residence floating above his front yard would affect his privacy and property values.

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

Attorney Pelech referred to the tax map and said it wasn't as if the property abutting the back was right on the property line. He said the distance between the garage and the abutter's residence was considerable. He noted that the fact that the structure might become a second residence was not before the Board. He said the applicant did what the Board asked for and minimized the impact to all of the abutters.

Julie Robb (no address given) said she was an abutter and felt that the design was nice but agreed that the back portion would impact the Rolfes' backyard.

Paul Lanzoni said he was the owner and wanted the extra room for family that would be moving in. He said they had done a lot of improvements to the property and that the project would improve overall property values.

Tania Huusko of 171 Elwyn Avenue said that the owner's outside lights were always on and that she empathized with the Rolfes about lights shining in their windows.

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

### **DECISION OF THE BOARD**

The Board discussed it. Vice-Chair LeMay said it would make a difference if the applicant could move the project several more feet away. Mr. McDonnell said the project was barely into the 20-ft setback, but given the way the house was angled, he didn't know what else the applicant could do. He said he didn't think it was that big of an encroachment into the setback. Mr. Lee said the arborvitae would be a mitigating factor because the trees would grow and provide more privacy.

Chairman Rheame noted that the applicant reduced the structure's size and moved it forward, but it still struck him as a pretty large addition to a modest house. He said his biggest concern was that the nature of the lot forced the addition back quite a bit, and noted that the new set of windows would face the rear property. He said it was a unique situation because the lot was ell-shaped and the bulk of the property was facing the back side of the abutter, but moving the

structure toward the front of the abutter's property added a new dimension. He realized that the applicant couldn't do much but thought the applicant was asking for a lot. He said the added space would be occupied space that would go up high and be thrust toward a property line where it would give additional light.

Mr. Parrott agreed with Chairman Rheaume's comments and said he had the most difficulty with the potential for diminution of property value criteria. He said the house was a modest one on a small lot, and the addition was very large in all dimensions. He agreed that the house's position was odd, but that the orientation of the house and the desire for a large addition pushed it back much closer to the rear property lines than desirable. He said the applicant was asking for considerable relief, even from that small of a setback, and that the lot didn't support it. He felt that if the house in the back was situated differently, it would be a different story, but looking at the distance from the back property and the fence and the rear house, it was really small, and the new tall addition would be very prominent. He said the project faced the front yard of the rear house and thought it would diminish the value of the rear house. He said he would have a difficult time supporting the project because he felt the project would result in a permanent deleterious impact to the neighbor's house.

*Mr. Parrott moved to **deny** the variances, and Mr. Mulligan seconded.*

Mr. Parrott said that he had a hard time seeing that the project would be positive in meeting the first two criteria of not being contrary to the public interest and observing the spirit of the Ordinance, especially in terms of the public interest because the project would be such an intrusion on at least one property if not more. He said the spirit of the Ordinance was to allow all property owners the enjoyment of their property and to not expect such a huge change after they bought their property. He said that granting the variances would not be in the public's interest and would hurt the adjacent property owner. As for substantial justice, he said the tipping test tipped in favor of not granting the variance because the applicant already had a garage, while many of the other properties had single garages and got along fine with those. He said that the applicant's property had a peculiar orientation but did have a single garage, which was useful. He noted that all the upgrades were much to the applicant's credit, but the substantial justice tipped to the neighbor. He said granting the variances would diminish the value of surrounding properties, and he referred to his prior comments. He said that the project would have a negative impact on surrounding properties, especially the property immediately to the rear. As far as unnecessary hardship, Mr. Parrott said the property did have special conditions but that they didn't rise to the point of approving that arrangement. He said the proposed use was not reasonable and that the project did not meet all the criteria.

Mr. Mulligan agreed with Mr. Parrott. He noted that other points were made contrary to those because the difficult project was on a difficult site. He said he thought it did pass the unnecessary hardship test and that setback relief in that part of Portsmouth was not uncommon due to pre-existing setback violations. He said that it was the mass and scale of what was proposed within the setback that was troublesome, and that the project didn't pass the substantial justice criteria. He said the Board had to balance the loss to the applicant if denied against the gain to the public, and that the articulated loss to the applicant was that he wouldn't have an attached two-car garage, which he felt was not a significant loss to the applicant. He noted that

there were thousands of properties in downtown Portsmouth that either didn't have garages or had detached garages, and that there was no compelling reason for making all the applicant's neighbors suffer so that one property could have an attached garage. He said it wasn't appropriate and that he would support the motion to deny.

Chairman Rheume said he could support an attached garage of the same height as the existing one and also more conforming, but making it higher and adding living space over it put the burden in the setback area higher than he was willing to approve.

*The motion passed by a vote of 5-1, with Mr. McDonnell voting against the motion.*

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Mr. Johnson resumed his voting seat. Mr. Mulligan recused himself from the vote.

#### C) Case 9-10

Petitioners: 143 Daniel Street LLC

Property: 135 – 143 Daniel Street

Assessor Plan: Map 105, Lot 19

Zoning District: Character District 4 (CD4), Character District 5 (CD5), Historic District (HD), and Downtown Overlay District (DOD)

Description: Create additional underground parking space.

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

1. A Variance from Section 10.1114.20 to allow an 8'± x 16' ± parking space where an 8½' x 19' space is required; and (b) to allow a 16'± wide travel aisle where a 24' wide travel aisle is required. *This petition was postponed from the September 26, 2017 meeting.*

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

Attorney Peter Loughlin was present on behalf of the applicant to speak to the petition. He reviewed the history of the project in detail. He said that the owner of the apartments, Steve Wilson, felt that three additional parking spaces could be located in the garage. He said he had never striped or used those parking spaces and that only part of the proposed space would be in the travel way. He said the applicant had the right to come back before the Board and ask for a modification of the plan that was approved in 2013. He said the Board received a letter from one of the condominium owners saying that he was unaware of the plans and that the applicant was deceptive. Attorney Loughlin said that the recorded condominium documents contained a plan showing the three potential additional spaces and were given to each condominium purchaser. He said the deeds had provisions stating that the owners had read the documents and agreed with them. He said the applicant wanted approval to create one compact parking space on Daniel Street that would allow a 16-ft travel way. He reviewed the reasons and said the criteria were met. He submitted letters of support from people who used the Daniel Street Garage parking spaces and a petition of property owners who weren't in opposition to the Board.

Chairman Rheume asked what hardship drove the additional parking spaces. Attorney Loughlin said it was to create an additional space for one of the dwelling units. He said the need was realized when the development was built, but it wasn't done. Chairman Rheume noted that the project showed an intent to provide three additional spaces four years before, but was only asking for one. He asked whether the Board would see another request in another four years. Attorney Loughlin said the intent was just for one space to make the condominium work more smoothly. In response to further questions from Chairman Rheume, Attorney Loughlin said the space was listed as a compact vehicle spot and was smaller than normally required by the Ordinance. He said the developer could limit the type of car that would be parked in that space. He said the space would be assigned to one specific condominium unit.

Mr. Lee asked what the 4' triangle on the floor plan represented. Attorney Loughlin said it was a wall that was constructed.

Steve Wilson stated that he needed one more space for one of the apartments and that it wouldn't be a problem with a compact car. He said the wall was a portion of the parking space that would overhang into the 20-ft travel lane. He further explained the parking space diagram and who they were assigned to. Chairman Rheume asked whether the wall was structural. Mr. Wilson said it was not. Chairman Rheume said the Board's concern was that the project was previously presented in a certain configuration that they approved, and now it was being changed in a short timeframe. He said the Board was always cautious about whether an applicant would ask for more and negate the original motion. Mr. Wilson said it was a hardship because he really needed the parking space and that there would be a space for each resident.

Vice-Chair LeMay noted that the filed plans showed two parking spaces going down the ramp, and he pointed out that Mr. Wilson now said it would be the last space he would need. Mr. Wilson said it was just a condominium document and the spaces were described as convertible space that had never been used or striped. He said the final plan didn't show them.

Vice-Chair LeMay said that when the dust settled, there would only be that one parking space and the applicant wouldn't pursue any others. Mr. Wilson agreed.

Attorney Brian Wade said he represented the applicant and had been involved in drafting company documents for many projects and also drafted and registered homeowner's association documents. He explained in detail why the three spaces were reserved and how the units sat as a convertible space and not as specific condominium units. He said the two condominium owners who complained knew that the spaces would not be converted because they signed the document. Vice-Chair LeMay asked what the point was of convertible spaces and why they weren't assigned before. Attorney Wade said the additional spaces would be reconfigured at a future date. Instead of registering all of them at once, he said the developer indicated that they would do what they needed to do for the condominium units they had at the time.

Chairman Rheume noted that Spaces 7, 8, 9, 14 and 15 were also convertible space but were not being used, and he asked whether the Attorney General's office had done that. Attorney Wade said the Attorney General had nothing to approve because the applicant wasn't asking to register or sell those spaces. He said, however, that those spaces were being used by the convertible

space apartment owners and not the condominium units. He said the parking spaces were considered convertible space and not condominium units by statute.

Peter Taylor said he was the property manager for Piscataqua Landing and that he was in favor of the additional parking spot at 143 Daniel Street. He said there was enough room and that it would not interfere with any other parking spaces. He said he parked in the garage regularly and no one had complaints about moving around in the garage. He noted that the two condominium owners submitted emails without his consent.

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

Charles Leto of 29 Chapel Street denied that he was ever notified of anything and said he also had two neighbors who denied that they were told of the changes. He said he couldn't get out of the parking garage one day because there was a car parked behind him. He said he emailed Mr. Wilson, who said he could use the space any time he wanted to. Mr. Leto said he discussed it with the Planning Department and received an email from Nick Cracknell saying that they wouldn't sign off on the project until the original plan that was agreed to was filed. Mr. Leto said there was no hardship because Mr. Wilson was granted 19 spaces in 2013 and a 20-ft passageway, and he promised he would provide parking for every residential unit. He said Mr. Wilson sold 14 spaces knowingly and wanted to make it up by putting junk in the passageway. Mr. Leto said he couldn't back out because vehicles were packed into that passageway, which was contrary to the public interest and the spirit of the Ordinance. Vice-Chair LeMay asked whether Mr. Leto could back out when there was a third car involved. Mr. Leto said he couldn't back out without hitting a car. Vice-Chair LeMay asked whether it would be in Mr. Leto's interest if the third car in the lineup wasn't used, and Mr. Leto agreed.

Shiva Nanda said he lived in Condo 301 and signed a PMS document in 2015 because the document stated that he and his wife had to be notified of any changes. He said 19 parking spots were registered and agreed that Mr. Leto's space couldn't be backed out of without going into the common space. He said it was a safety hazard because a parking spot reduced to 16 feet allowed no way for a vehicle to go in or out. He said the space was misrepresented to them and that he and his wife previously had physical incidents with their automobiles in that garage.

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

Attorney Loughlin said the deed indicated that the owners read the documents and that the plan referred to the additional three spaces. He said the applicant wasn't seeking approval for the space in the Chapel Street Garage but only wanted approval for one additional space and had promised that there would never be additional requests for other spaces.

Mr. Nanda said it was puzzling that someone got 19 spots approved yet registered 22 spaces. He said the applicant knew all along that he wanted 22 spaces. He felt that it was deceptive.

Mr. Leto said he didn't believe that the plan was drawn to scale, and he explained why.

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



## DECISION OF THE BOARD

The Board discussed the petition. Mr. Johnson said his experience was that neither one of the dimensional numbers was overwhelming. He said it was infrequent that two vehicles met each other during trips in and out of the garage and that the aisle width depended on the parking situation. He said there could be compromise for turning around, so he didn't have much of a problem with the dimensional request and didn't believe it would affect anyone drastically.

Vice-Chair LeMay said he understood that the 16 feet was tight but not too tight if one car was going down that way. He said the low frequency of cars in and out might cause some negotiation, but that his biggest concern was that the cars had to back down the corner into Chapel Street, which was different from a car just making passageway down a ramp. He said there might be a better way to put that space in. Mr. Parrott said he had a problem with the Board approving a 16-ft space so far under the standard. He said that many full-sized cars were 16 feet long and felt that it was a poor design in that regard, and that he would have a problem approving a space that small, with hardly any maneuvering space to get and in out for a full-sized car.

Chairman Rheume said the request was originally 20.8 feet and the Board granted a 20-ft maneuvering passageway and gave extra allowance. He said the situation came to a head recently and was forcing the request. He noted that there was some difficulty involving maneuvering into the aisle, and now the applicant wanted to further reduce that aisle. He said that more reduction should not be allowed on that aisle way and didn't see a hardship.

*Vice-Chair LeMay moved to **deny** the variance, and Mr. Parrott seconded.*

Vice-Chair LeMay stated that the Board had a lot of discussion and, despite all the machinations with the condominium documents, there was clearly some miscommunication. He said the fact was that 19 spots were approved, and the Board had put a lot of work into it at the time to make a tolerable plan without a lot of wiggle room, and now the Board was asked to do the wiggle. He said he didn't think it was in the public interest and that the many people who lived there represented the public. He said that granting further relief to the problem would be nothing but trouble for the people who had to use the garage. He said he didn't see a hardship and said the Board had a perfectly good plan previously. Mr. Parrott concurred with Vice-Chair LeMay and said he would refer to his previous comments.

Chairman Rheume said he would support the motion and noted that the original application met the City's parking requirements, which he felt was the biggest criteria that the applicant wasn't now meeting. He said the applicant was asking for more and kind of shoehorning it into an area that the Board already had concerns about.

*The motion **passed** by unanimous vote (6-0).*

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At this point, the Board decided to postpone Cases 10-3 through 10-6 to a future meeting due to the late hour.

*It was moved, seconded, and unanimously passed to postpone Cases 10-3 through 10-6 to the Tuesday, October 24 meeting.*

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

Mr. Mulligan resumed his voting seat.

Chairman Rheame recused himself from the petition, and Vice-Chair LeMay assumed his voting seat as Chairman.

Acting Chair LeMay emphasized that the issue was whether the City made an error in the cease-and-desist decision.

Case #10-1

Petitioners: Working Stiff Properties LLC, owner, Matthew Beebe & Barbara Jenny, applicants  
Property: 87 Lincoln Avenue  
Assessor Plan: Map 113, Lot 34  
Zoning District: General Residence A (GRA)  
Description: Appeal.  
Requests: Appeal by the owners of the action taken by the City of Portsmouth issuing a cease and desist for a non-permitted use as a short term rental for the property referenced above.

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

The applicants were not present to speak to the application. Acting Chair LeMay said the Board could proceed without them. He summarized the petition and stated that a neighbor complained about the operation of the Airbnb. He said the applicant was just renting out a unit and that the Code Enforcement Officer said they had to cease and desist because there was no provision in the Ordinance that allowed it.

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

Attorney Monica Kieser told the Board that there were letters from John Aldrin in their packet for an administrative appeal. She said she also represented Peter Feinold, who was not in favor of allowing the Airbnb to continue.

Tom Smart of 133 Lincoln Avenue said Mr. Feinold was his neighbor and thought the proposal was a radical departure from the character of the neighborhood and should be denied.

Susan Kanor (no address given) said the code was there for a reason and said she felt less safe living next to an Airbnb with people coming and going, and no owner overseeing anything. She said she also felt it could pose a fire hazard.

Jason Karlin of 88 Lincoln Avenue said he opposed allowing the Airbnb to continue because the house wasn't owner-occupied. He said he was also concerned that a precedent could be set.

Peter Feinold of Lincoln Avenue said he lived next door to the Airbnb and was concerned that the City would permit the owners to rent the Airbnb primarily to weekend transients, which could lead to other homeowners renting to short-term transients.

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

Attorney Kieser said she reviewed the Staff Memo that felt that the Ordinance was proper. She said the Airbnb was advertised as being good for family parties, wedding parties, and corporate stays, and that it was a real concern that people with a vacation mindset would come with multiple vehicles, which wasn't something the neighborhood wanted.

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

### **DECISION OF THE BOARD:**

The Board discussed it. Acting Chair LeMay read the Planning Department's interpretation of the Ordinance, stating a short-term rental was the rental of a dwelling unit for occupancy for a period of less than 30 consecutive days, but did not include an authorized lodging use of a dwelling unit such as a B&B or inn that had received all the required land use approvals. The rental of a dwelling unit for 30 or more consecutive days of the calendar month would not be considered a short-term rental. Acting Chair LeMay said that the Ordinance did not permit short-term rentals as part of a normal residential use.

Mr. Johnson said the Planning Department's interpretation according to the Ordinance was proper but said he agreed with the appellant about the discriminatory nature of cease-and-desist orders. He felt that it was an unclear and unfair method for the City to take to enforce or issue cease-and-desist orders based on arbitrary neighborhood locations and who liked or didn't like who. However, he felt that the code official's interpretation was proper. He gave an example of nine college students renting the house, which would present issues but would be legal because the students would not be transients but would also not be guaranteed to be preferred neighbors.

Mr. Mulligan said the issue of selective enforcement was problematic but that zoning violations were often enforced because someone brought them. The alternative was having an army of people like the code official set loose on the City, which no one wanted. He said there was no way to enforce every ordinance uniformly on every property, and if it meant selective enforcement, then that was just the way it was. He said the City did as good a job as it could with the manpower it had, and he didn't think the discussion should lead to more enforcement rather than less. He agreed that the ordinance the way it was written and interpreted prohibited that type of use. He noted that the applicant wasn't present to give the Board any basis to overturn the cease-and-desist action, and he thought the Board had to deny the petition.

*Mr. Mulligan moved to **deny** the appeal of the action taken by the City as showing a cease and desist. Mr. Lee seconded the motion.*

Mr. Mulligan stated that he would refer to his previous comments. Mr. Lee said he concurred with Mr. Mulligan and had nothing to add.

Mr. Parrott said the Board was looking at the actions of a code official and that it struck him that the code official was diligent and fair-minded because the code official proposed ways to resolve the issue and waited weeks if not months for an answer, and that he tried to work with the folks in violation but didn't get much of a response. He said the City acted in a proper and thoughtful fashion and tried to work with the people who were in violation, so he thought the Board could and should uphold the action for the code official and deny the request.

*The motion **passed** by unanimous vote (6-0).*

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Chairman Rheume resumed his voting seat and Acting Chair LeMay resumed his status as Vice-Chair.

Case #10-2

Petitioners: Todd A. Milne Revo Trust (50% INT), Todd A. Milne, applicant  
 Property: 315 Wibird Street  
 Assessor Plan: Map 132, Lot 13  
 Zoning District: General Residence A (GRA)  
 Description: Enclose rear stairway and screened porch in accessory structure.  
 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 of 4' ± 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:**

Chris Forest was present on behalf of the applicant to speak to the petition. He reviewed the petition, noting that the main issue for the changes was to make the structure safer for the children. He reviewed the criteria and said they would be met.

Vice-Chair LeMay asked Mr. Forest to explain the photos, which he did. Chairman Rheume said it looked like a full bath was going into the first floor. Mr. Forest said it a utility sink.

The owner Karen Milne said the upstairs was a great space and was utilized by neighborhood kids to do woodwork, pottery, and other creative projects.

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

Mr. Johnson said that the project was tasteful and very small wouldn't be noticeable to most of the neighbors. He said he was previously concerned because the immediate neighbor to the south was almost to the property line, but after looking at it more, he realized that the accessory structure was pretty set back and didn't think the neighbor would be affected. He noted that the neighbor wasn't before the Board to say he had a problem with it. He said granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because he saw no detrimental effect to the character of the neighborhood and no public health, safety, and welfare concerns. He said it was a small, tasteful addition that was in character with the existing accessory structure design and the main house. He said the need for the 4-ft setback made sense in siting the addition along the same existing exterior wall, and it looked like accommodations could be made in the plan to shift it over, but he said the stairway would be tight if it had to meet the 10-ft setback, so he felt that it was a reasonable location. He said that granting the variances would do substantial justice because there would be no negative effect on the public outweighed by the benefit to the applicant. He said surrounding property values would not be diminished and felt that the value would be bumped up a bit. Relating to the literal enforcement of the Ordinance resulting in unnecessary hardship, he said the lot was very narrow and not completely unique to the area, and that it seemed that nothing could be added to the accessory structure or to the main house without some type of setback relief. He said the siting of the house and accessory structure and the reasonableness of siting a 4-ft addition to the existing structure created enough of a hardship to approve the petition.

Mr. McDonell said he was initially confused and concerned about what the actual use of the structure would be, but the explanation was reasonable. He said he concurred with Mr. Johnson that granting the variances made sense.

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

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*It was moved, seconded, and **passed** by unanimous vote to adjourn the meeting at 10:00 p.m.*

Respectfully submitted,

Joann Breault  
BOA Recording Secretary