

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

**7:00 P.M.**

**AUGUST 22, 2017**

**MEMBERS PRESENT:** Chairman David Rheume, Vice-Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Chris Mulligan, Arthur Parrott, Alternates John Formella and Peter McDonell

**MEMBERS EXCUSED:** Patrick Moretti

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

Chairman Rheume asked for a motion to take Petition # 8-7, 217 Bartlett Street, out of order so that it could be postponed.

*It was moved, seconded, and **passed** unanimously to take the petition out of order.*  
(See Petition #8-7).

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**I. OLD BUSINESS**

A) Request for Rehearing regarding property located at 525 Maplewood Avenue.

Mr. Mulligan recused himself from the request for rehearing, and alternates Mr. McDonell and Mr. Formella assumed voting seats.

Chairman Rheume stated that the Board had made a previous decision to deny the applicant's variance request to subdivide one lot into two. Vice-Chair LeMay said that he reviewed the request for rehearing and thought it boiled down to whether the Board had the responsibility and the need to know what the purpose behind the request was, which he said was still unclear. He said it seemed that the applicant's response to that was that it was none of the Board's business. He said that it went beyond what the application was for, for example, the applicant's representative saying that they didn't have their final plans or that they could ask for more, and so on. Vice-Chair LeMay said the Board wasn't trying to judge the plans, but rather judge what the proposed use was, and that the Board was within their rights to request a full picture of what the issues were so that they could grant that kind of variance. Mr. Lee said there were no preliminary plans, no plans of any kind. He said the applicant just wanted to get a variance to subdivide a lot for a yet-to-be-determined purpose.

Mr. Parrott concurred with the comments and said the requester seemed to be questioning the Board's authority or ability, as well as the appropriateness of the Board asking straightforward questions about the plans. He said the applicant asked for a substantial variance, and when the Board asked what the reason was, the applicant essentially said that the Board didn't need to know, which didn't strike him as the right thing at all. Mr. Parrott said the Board was within its purview to use their judgment when they weren't happy with the information provided, whether it seemed wrong or incomplete, and to deny the request.

Mr. Formella noted that he had been in the minority on the decision and probably would have voted to grant the variance, but he thought there was sufficient reason to deny the petition and that it was fair on the Board's part to try to judge whether there was a hardship for the applicant. He said that, without knowing what the applicant wanted to do with the second lot, it was hard to know what the applicant was losing by not getting the variance, so he thought it was a sufficient reason to deny the variance. He said he would not support a rehearing.

Chairman Rheume said he re-watched the Board's deliberations and the presentation and thought the Board had been well focused. He said he disagreed with the arguments made by the applicant's representative that the Board was doing the Planning Board's job and not the job of the Zoning Board of Adjustment. He said the Board was focused on the fact that the applicant was taking one lot that was very conforming and turning it into two lots, one of which was not going to be conforming anymore. He noted that Mr. Parrott specifically spoke to that and wanted to know the reason the applicant wanted to go out of compliance when he was already in compliance. Chairman Rheume said the applicant's other complaint related to the Board's rules and regulations and the way the Planning Board set them up and didn't tell the applicant that he had to have a full plan of what he wanted to do before presenting to the Board. He said the Board provided their rules and regulations as a guide to help applicants make complete applications. He said that, while it wasn't comprehensive and didn't include each single thing that the applicant might need, there was plenty of opportunity for the applicant to ask for a postponement, considering the Board's questions. He said the applicant didn't do that. Chairman Rheume said the Planning Staff could not assure that an applicant's request would be ready to go and would get a stamp of approval from the Board. He said the Board's process was to hear the petition and deliberate, and request additional information if necessary, to come to a decision. He said he could not find anything indicating that the Board was in error.

## **ACTION**

*Vice-Chair LeMay moved to **deny** the request for rehearing, and Mr. Parrott seconded.*

Vice-Chair LeMay stated that he would bring forward his previous comments. Mr. Parrott said he would also refer to his previous comments.

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

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## **II. PUBLIC HEARINGS – OLD BUSINESS**

Mr. Johnson and Mr. Mulligan recused themselves from the petition, and the alternates Mr. McDonell and Mr. Formella retained their voting seats.

A) Case 7-10.

Petitioners: Petition of Flintatta LLC, owner and the Unitarian Universalist Church of Portsmouth, applicant  
Property: 73 Court Street  
Assessor Plan: Map 116, Lot 19  
Zoning District: Character District 4-L1.  
Description: Change of use.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:  
1. A Special Exception under Section 10.440 Use #3.11 to allow a religious place of assembly in a district where the use is only allowed by special exception.  
2. Variances from 10.5A41.10A to allow the following: a) a 1'± left yard and 3'± rear yard where 5' is required for each; b) building coverage of 66% where 60% is the maximum allowed; and c) open space of 11.8% where 25% is the minimum required;  
3. A Variance from Section 10.1112.30 to permit no off-street parking spaces to be provided where the following are required: a) 8 off-street parking spaces for the 2,000 s.f. of office space; and b) 67 off-street parking spaces for the assembly use. (*This petition was postponed from from the July 25, 2017 meeting, revised and subsequently postponed at the August 15, 2017 meeting.*)

**SPEAKING IN FAVOR OF THE PETITION**

Attorney John Bosen was present on behalf of the applicant to speak to the petition. He introduced the project engineer John Chagnon. Attorney Bosen reviewed the petition in detail. He addressed the special exception criteria and the variance criteria, saying they would be met.

Mr. Parrott noted that there were parking spaces at the back of the building. Attorney Bosen said they belonged to the neighbors. In response to further questions from Mr. Parrott, Attorney Bosen said the property line was at that location and that the church was in discussion about leasing some of the parking spaces on the weekends only.

Chairman Rheume noted that the applicant would use the structure for wedding ceremony parking as well, which he thought would be competitive with other parking resources. Attorney Bosen said that the wedding itself would take place at South Church and that most likely the guests would walk down the street to the Unitarian Church.

**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. Parrott stated that the petition wasn't asking for a lot of relief and change. He said the structure was in a congested area and had had many uses over the years, and it would be likely that most of the activities would occur on Sunday morning, so people wouldn't really be conscious of any change to the neighborhood. He said the building was what it was and would be used for something, and he felt that the Sunday morning use would be less impactful than anything else that would go in there. He said it was nothing that the Board couldn't support.

Chairman Rheume said he had some reservations about the use of that building in the applicant's previous petition but that the current application seemed to make a lot more sense. He said it was an appropriate use for the building and noted that the application would keep the upper floor as a reception area, which would be a nice re-use of it. He said his biggest concern was the parking issue, but since the applicant provided background information indicating that the building would be used for receptions and that people could walk from South Church and would have already secured parking elsewhere, he felt that it wouldn't add an additional burden.

Chairman Rheume asked for a motion for the Special Exception.

*Mr. McDonell moved to **grant** the Special Exception, and Vice-Chair LeMay seconded.*

Mr. McDonell noted that the building was historically used as a church and that the request was to re-use it. He said the use for religious assembly and education was permitted within the district and that there would be no hazard to the public or adjacent properties on account of potential fire, explosion, release of toxic materials, and so on. He said nothing like that would be stored on the site. He said that granting the special exemption would pose no detriment to property values in the vicinity or change in the essential characteristics of the area on account of the location, scale of buildings and other structures, outdoor storage, pollutants, noise, and so on. He noted that nothing like that was implicated in the proposed use of the site and would not harm property values in the vicinity. He said there would be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. Mr. McDonell noted that he was initially concerned about that, but his concerns were alleviated given that the South Church congregation was already in the vicinity and the majority of traffic going there would already be in the area. He said that granting the special exception would pose no excessive demand on municipal services including water, sewer, waste disposal, police, fire protection, and so on and would cause no significant increase of stormwater runoff onto adjacent properties or streets.

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

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

The Board then considered the variances.

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

Vice-Chair LeMay stated that the variances were small and essential to the use of the building, consistent with the American Disabilities Act (ADA), and so forth. He said that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance because the changes requested would not have an impact on the nature of the neighborhood and the neighborhood would remain essentially the same. Substantial justice would be done because the balancing test, in terms to the public, would perhaps be a bit more parking congestion at some periods, but considering that the use of the building hung in the balance, he thought it was a reasonable judgment and would do substantial justice. He said that granting the variances would not diminish the value of surrounding properties, given the low impact of the use and the day of the week and the nature of surrounding properties. Relating to hardship, Vice-Chair LeMay said most of the hardship had to do with the fact that it was an old church on a small lot and packed into the downtown area, where the conditions were what they were and there wasn't much one can do about it. He said that preventing that particular use would cause a hardship, and the building would be unusable in any other practical way that would have less parking impact.

Mr. Parrott said he concurred with Vice-Chair LeMay. He added that all the folks going to the facility would be very aware of the parking conditions and the area, and they would easily adapt and make use of the areas that had available parking on Sunday mornings, so it wouldn't create a hardship on them or the neighbors. He said the area was fully developed and was self-limiting. If the applicant tried to hold a function for 1,000 people, it wouldn't work. He said the slight change in use would go very smoothly.

Chairman Rheume said he would support the motion. In terms of the variance criteria, he said it was necessary to allow the ADA access to the second floor, which wasn't technically required, but that it would be very limiting to what they proposed to do and it would be in keeping with the spirit of the ADA. He said the proposed structure was separated off visually and physically from the building, so it would continue to preserve the historic nature of the bulk of the building while adding an additional functionality. He also noted that it was a small lot that required tight setbacks, which many buildings had in the area, so it was in keeping with the spirit of the Ordinance and the character of the neighborhood. As for the parking issue, he said the building's uses were related to other ongoing uses at the South Church, so while it appeared to be asking for a lot of relief, the actual implementation would have a lot less impact.

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

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Chairman Rheume and Mr. Johnson recused themselves from the petition, and alternates Mr. McDonell and Mr. Formella retained their voting seats. Vice-Chair LeMay assumed Acting Chairman.

B) Case 8-4.

Petitioners: Sean P. and Robin M. Murphy  
Property: 24 Kent Street  
Assessor Plan: Map 113, Lot 39  
Zoning District: General Residence A  
Description: Construct a 2-story attached garage.

- 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 28.3%± building coverage where 25% is the maximum allowed. (*This petition was postponed from the August 15, 2017 meeting.*)

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

The applicant Sean Murphy reviewed the petition, pointing out that the garage needed to be separated from the house so that a vehicle could turn into the garage. He said he required significant offsets, which he reviewed. He said other challenges were that the garage was at ground level and needed stairs to match the house's entry. He said the second floor would be a master bedroom and that the garage was not designed to be an Accessory Dwelling Unit (ADU). He reviewed the criteria and said they would be met.

Mr. Mulligan asked whether the existing amount of paved driveway behind the dwelling would remain or change. Mr. Murphy said that he would probably pull out the existing pavement to increase drainage and perhaps put in a brick patio. Mr. Mulligan said it looked like the backyard was dominated by the driveway and parking. Mr. Murphy agreed and said they usually parked two cars back there. He said the lot next door had their driveway next to his as well as a two-car garage almost on the property line.

Acting Chair LeMay asked what the exact coverage was. Mr. Murphy confirmed that it was 22.4% coverage. He said a nearby deck would be removed and that the only additional square footage would be the garage footprint.

### **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. Mulligan said that what was proposed was modest in terms of a garage and that he understood what the applicant was up against as far as trying to get the grades to match. He said the main dwelling had a foundation a few feet above grade, so extra infrastructure would be needed to marry the existing structure to the proposed new one. He said the applicant could probably meet 25% and design something, but at what cost and what benefit to the public. He noted that most of the property's backyard was given to parking, so he didn't have much of a problem with the requested relief.

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

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance and the essential residential character of the neighborhood would not

be altered by what the applicant proposed. He said it would result in substantial justice because the loss to the applicant if the Board required that he design the garage in such a way that strictly met the 25% standard would not be outweighed by any benefit to the public. He said that granting the variance would not diminish surrounding property values because the garage would be tastefully designed and would have a positive impact. As for hardship, he said the special conditions of the property were that the existing dwelling had the 4-ft foundation and that the garage would be on a different plane, and structural work was necessary to connect the two, which pushed it over the 25%. He didn't think there was a fair and substantial relationship between the 25% and its application to the property. He said the petition met all the criteria.

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

*The motion **passed** by unanimous vote, 6-0.*

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### **III. PUBLIC HEARINGS – NEW BUSINESS (continued from August 15, 2017)**

Chairman Rheume and Mr. Johnson resumed their voting seats. Acting Chair LeMay resumed his seat. The alternate Mr. McDonell retained his voting seat and Mr. Formella returned to alternate status.

#### **6) Case 8-6.**

Petitioner: Arne LLC  
Property: 0 Sylvester Street  
Assessor Plan: Map 232, Lots 43-1 & 43-2  
Zoning District: Single Residence B  
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: home including:  
1. Variances from Section 10.521 to allow the following: a) continuous street frontage of 80.84'± where 100' is required; b) a lot area and lot area per dwelling unit of 6,713± s.f. where 15,000 s.f. is required; c) lot depth of 82.2'± where 100' is required; and d) a front yard setback of 21.7'± where 30' is required.

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

Attorney Derek Durbin was present on behalf of the applicant to speak to the petition. He introduced the managing member of Arne LLC, Ray Donahue. Attorney Durbin briefly reviewed the history of the Prospect Park Subdivision and said his client wanted to consolidate two lots into one for a single-family home. He reviewed the criteria in detail and said they would be met. Attorney Durbin also proposed a stipulation that any approval be contingent on the applicant legally merging the two lots as one.

Mr. Mulligan said that the existing conditions plan indicated seven lots of record, and he verified that there was only one permanent dwelling on Lot 199 that bled into Lots 200 and 198. He

asked what was on Lots 201 and 202. Attorney Durbin said there was a large in-ground swimming pool on one lot, with a structure next to it that was probably intended for storage or pool use. He said there was a concrete slab on Lot 202 but didn't think the applicant had any intention to immediately do anything with it. Mr. Mulligan asked whether those lots had been formally merged with Lot 199. Attorney Durbin said the lots were all part of one lot at one time and that the only lots that could be legally unmerged from the others were the two that were being discussed. Attorney Durbin said that the lots were initially involuntarily merged according to City records, but once they developed structures over lot lines, it likely created a voluntary merger. He noted that the two lots in question were annexed by City Council action.

Mr. Mulligan asked whether the Board would see another application in a year for a house on Lots 201 or 202. Attorney Durbin said it wasn't the intent and that he didn't know how the City would feel about the voluntary vs. involuntary merger, but the two lots were annexed purposely out of legal concerns regarding the merger status of the other preexisting lots of record.

Chairman Rheaume said that the City Council made it clear based on input from the Planning Board that it would be three separate lots. He asked Attorney Durbin whether he needed to go back to the Planning Board to merge the lots. Attorney Durbin said his client was finished with the Planning Board and that there would be no further site plan review.

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

No one rose to speak.

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

Ariel Sillanpaa of 4 Sylvester Street stated that she was not opposed to the project but had some concerns. She said she saw a growing trend for properties to be subdivided and joined and noted that modern-day energy requirements had evolved for a good reason. She said she was confused about what Exhibit D represented because what she saw was a grassy lot that was home to one shed and one operational trailer that were removed at the property's closing. She said the lot had been used as yard space for several years and would be half the size of what the current land code asked for. She said the front yard setback would affect her, as well as the additional traffic. She was also concerned about water drainage and suggested that a fence or shrubbery to respect her privacy be considered.

Attorney Durbin said the front setback stuck out because whatever was built would require relief. He said what the applicant proposed was further back than any of the other homes on the street. He said that Exhibit D consisted of photos from the Inspection Department file and represented the condition of the two lots historically.

Ms. Sillapaa said that her front door and the new house's front door would be parallel to one another and her concern was for more privacy rather than setback.

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



## **DECISION OF THE BOARD**

The Board discussed the petition in detail. Mr. Mulligan noted that the Board recently required an applicant to go through site review to flush out some concerns. He said the neighbors had legitimate concerns, and he thought there were other options available that could mitigate the concerns of the most affected abutters. He said he was willing to consider a rear yard setback because the property abutted a large wooded lot, and he thought it might be more appropriate. He noted that the abutter articulated reasonable concerns, such as drainage issues and appropriate screening, and felt that a site review might be appropriate.

Chairman Rheume said it sounded like the applicant wouldn't have to go back to the Planning Board but thought a second stipulation might be warranted due to the potential concerns from other cases in the neighborhood, in addition to the stipulation that the applicant offered.

Vice-Chair LeMay said he understood the horrible background of merged lots and separating them, and even if the lots were presently merged, they were kind of loosely bounded. He said the neighborhood had two 16,000 s.f. lots and one 12,800 s.f. lot, and the Board was looking to take a whole corner of it and plop something down. In looking at the topography of the lot where it sloped in the back, he agreed that the placement of the house might be better tucked in as far as possible to take advantage of the wooded area rather than encroach on an abutter.

Chairman Rheume said that, in terms of lot size, Sylvester Street had the largest properties and it seemed like people merged lots into bigger parcels, except for one home on Middle Street that was on one of the original lots. He noted that Marjorie Street had a lot of double-sized lots that were combined and that a few other streets showed a pattern of merging two lots to make one buildable lot. Vice-Chair LeMay said the Board was trying to judge whether the neighborhood context would be changed and that what happened one street over was a different world. Mr. Parrot said he concurred with the front yard setback concern. He said the requirement was 30 feet on the front, which made a difference to the potential owners of the new house. He said there was the luxury of backing onto a large wooded area and that it wouldn't infringe on anyone if the house were to be moved back and had a legal 30-ft front yard setback. He said it was a legitimate concern and that the Board should help make it happen.

Mr. McDonell said he understood the concern and wondered if there wouldn't be sort of a symmetry, with two front houses opposite each other on Sylvester Street, one house existing further back on a small lot, and another house opposite it with a development beyond that. He said the Sylvester Street neighborhood had its own characteristics but was less convinced that the project wouldn't be in keeping with the neighborhood's character.

It was further discussed. Chairman Rheume said the Board could deny the front setback or do a site review and let the Planning Board figure it out. He said the Board could grant a rear variance and deny the front variance. He noted that they also had the applicant's stipulation that the two lots be merged before the land permit was granted.

Mr. Mulligan said he could make a motion to grant Variances A through C, everything but the front yard setback. Chairman Rheume said the applicant could figure out a way to make the house fit into that envelope. Mr. Johnson said the applicant would have to come back before the Board. Chairman Rheume said the applicant would not have to come back if they figured out a way to squeeze the house into the reduced footprint but could come back if they felt they needed a rear setback.

*Mr. Mulligan moved to **grant** Variances A through C, excluding the front yard setback relief that was requested, with the following stipulations:*

- *That the applicant merge the two lots as stated*
- *That the project go before the Planning Board for site plan review.*

*Mr. Parrot seconded the motion.*

Mr. Mulligan noted that there was a lot of discussion. He said granting the variances would not be contrary to the public interest or to the spirit of the Ordinance and that the essential character of the neighborhood would remain residential even with a lot that was significantly smaller than required under the Ordinance. He said that substantial justice would be done, otherwise the applicant wouldn't be able to use the lots for any type of development whatsoever, so it permitted residential development in a residential zone on lots of record. He said granting the variances would not diminish surrounding property values because it would be new construction that would add value to the neighborhood, given that the Board was not granting relief that would have the most impact on the nearest affected neighbor. He said that he didn't believe the values of surrounding properties would be negatively affected by the relief that the Board was granting. He said that the special conditions that distinguished it from others in the area were that they were preexisting lots of record that would not be developable without the frontage and lot area relief granted. He said the property itself was bordered by the substantial Chase Home property that didn't have a full-time single family residential development on it and likely never would, so even though it was a much smaller property than some of its immediate neighbors, it wouldn't result in overcrowding. He said there was no fair and substantial relationship between the purposes of the Ordinance and their application to the property.

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

Mr. McDonell asked whether the Board had to make a motion to deny the front yard setback. Chairman Rheume agreed and asked Mr. Mulligan to include the fact that there was a specific denial of Variance D and to also state the criteria that it didn't meet.

Mr. Mulligan stated that the frontage relief would diminish the values of surrounding properties, especially for the abutter directly across on Sylvester Street. He said there was a fair and substantial relationship between the frontage requirement and its application to the property, and the purpose was to keep development far enough away from each other so that there was not overcrowding. He said it was an opportunity to avoid that, but granting the relief for frontage would result in some overcrowding, so it didn't meet the hardship.

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

Vice-Chair LeMay said that it could be a better fit for the topology of the lot and hoped that the applicant came back instead of just pushing the house back a few feet. Mr. Lee said it wasn't unusual in an urban situation for a house to be across the street, even though there hadn't been one there for a few years, and that times changed. Chairman Rheaume said he was torn but would support the motion. He said he was okay with the lot size because there were plenty of other examples in the neighborhood. He noted that a few houses on the original lots felt very crowded, which was probably due to the original concept that the lot was closer to town. He said he wasn't as won over with the setback and thought the house could be pushed further into the open area in the back, which would serve the look and feel of the property well.

*The motion to grant items a) through c) and deny item d) **passed** by a vote of 5-2, with Mr. McDonell and Mr. Lee voting against the motion.*

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7) 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) 35%± building coverage where 25% maximum is allowed.

## DECISION OF THE BOARD

Chairman Rheaume read the petition into the record. He said that the applicant requested a postponement based on some late feedback from abutters that he wanted to address.

*Mr. Mulligan moved to **postpone** the petition, and Mr. Parrot seconded.*

Mr. Mulligan said the Board typically granted at least one postponement and felt that the reason for the postponement was reasonable. Mr. Parrott concurred with Mr. Mulligan, adding that the reason for the first postponement made sense.

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

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8) Case 8-8.

Petitioner: Brian M. Carloni

Property: 30 Elwyn Avenue  
Assessor Plan: Map 113, Lot 25  
Zoning District: General Residence A  
Description: Construct a rear addition.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:  
1. Variances from Section 10.521 to allow the following: a) a 7'± right side yard setback where 10' is required; and b) 32% building coverage where 25% is the maximum allowed.

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

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

The contractor Adam Rezick reviewed the petition and said the criteria would be met.

Vice-Chair LeMay asked what was in the garage and the shed. Mr. Rezick said the shed and the garage were used for storage. Mr. Mulligan asked how much square footage the house had. Mr. Rezick said it was just under 1100 square feet.

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

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

### **DECISION OF THE BOARD**

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

Vice-Chair LeMay stated that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance. He said the test was whether the neighborhood would change, and he thought it wouldn't be noticeable for the most part. He said there was an improvement, so it would be more in conformance with the Ordinance. He said that granting the variances would do substantial justice because it would allow the owner to improve his property and increase his enjoyment of the property as well as bring the property more into the 21<sup>st</sup> century without burdening the public with the change. He said that granting the variances would not diminish the values of surrounding properties because the change was so small that it would be immeasurable in respect to property values. As for the hardship, Vice-Chair LeMay said strict enforcement of the zoning laws was not the case with respect to the lot coverage and would get better, so it might be impossible to shrink things to the point where it would actually comply. For those reasons, he said the Board could approve the variances.

Mr. Johnson said he wondered at first why the addition couldn't be shifted to the other side to reduce the need for a side yard setback request, but he thought it was to retain the same alignment with the main entry. He said that if the addition was shifted to the other side of the

building without needing the side yard setback relief, the rear entry and bathroom probably wouldn't fit in the program of the addition; otherwise, the setback would still maintain the same alignment from the existing building, which he could get behind.

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

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9) Case 8-9.

Petitioner: Patrick J. Sayers  
Property: 56 Brackett Road  
Assessor Plan: Map 206, Lot 23  
Zoning District: Single Residence B  
Description: Construct a new single-family residence replacing an existing structure.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:  
1. Variances from Section 10.521 to allow the following: a) a lot area and lot area per dwelling unit of 14,209 s.f. where 15,000 s.f. is required; and b) 62.14' of continuous street frontage where 100' is required.  
2. A Variance from Section 10.311 to allow a structure on a lot without the minimum lot area and street frontage.

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

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

Attorney Bernie Pelech was present on behalf of the applicant to speak to the petition. He reviewed the petition and criteria in detail. He submitted a letter from the abutter across the street who supported the application. He referred to another abutter, Mr. Edwards, who also submitted a letter stating that the proposed location of the building conflicted with him and the intended spirit of the Ordinance. Attorney Pelech outlined the past variances that Mr. Edwards had received. He stated that his client's variance was requested because the lot was a nonconforming one and that the proposed home met all the requirements of the Ordinance.

Mr. Parrott asked what the proposed front setback was. Attorney Pelech said he thought it was 30 feet. Mr. Parrot noted that the Planning Department memo indicated that it was proposed at 20 feet. The applicant Mr. Sayers said the standard setback was 30 feet and that it resulted in 19.6 feet, so he went to 21 feet to be safe. Mr. Parrot asked what the height off grade was for the proposed front steps. Mr. Sayers said it was to be determined based on the grade of the driveway, but he thought it would probably be just a few feet.

Chairman Rheume asked what driving design factor made Mr. Sayers put the garage in front of the main house. Mr. Sayers said he considered how it would impact the direct neighbors as well as the overall character of the neighborhood and Portsmouth. He said two homes on the street had garages integrated into their houses, but he would have had to seek a variance on setbacks so he chose not to do that so that he could maximize green space. He said that the garage-forward design was to preserve light and air for the neighbors and to preserve green space. He said the

greenspace in the backyard was important and that the rear of the lot had woods that provided a natural buffer from the school noise. He said he also wanted to avoid runoff issues.

Chairman Rheaume asked how Mr. Sayers was keeping the characteristics of the neighborhood. Mr. Sayers said the setback of the garage would be the same and that the garage would be staggered, which would leave a welcoming front door. He said he matched the aesthetics of the garage with the main house and kept the New England look.

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

No one rose to speak.

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

Ken Linchey stated that he was the Facility Director of Portsmouth Schools and that they tried to maintain as much greenspace as possible, in regard to the buffer. He asked that the applicant replace any trees that were damaged by the project.

Mr. Sayers agreed that he would replace the tree if it was damaged.

### **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variances 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 and the essential character of the neighborhood would not be altered. He said the applicant was replacing an existing dwelling with a new one. Substantial justice would be done because the loss to the applicant would far outweigh any gain to the public. He said the applicant could not comply with the lot coverage of the frontage requirement, and that the lot coverage was barely minimal. He said that granting the variance would not diminish the value of surrounding properties. Mr. Mulligan said he thought the neighbors would see an increase in their property values because new construction would replace an old and small home. As for literal enforcement resulting in unnecessary hardship, Mr. Mulligan said the special condition was that the lot was a pre-existing nonconforming one and there was no possible way to comply with the lot coverage requirements or the frontage requirements because the lot didn't have enough area, so there was no fair and substantial relationship between the purpose of those parts of the Ordinance and their application to the property. He said the use was a reasonable one, a residential one in a residential zone, and otherwise met all the dimensional criteria.

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

Chairman Rheaume said he would support the motion. He said the biggest hang-up was the garage placed in front of the house, which was odd compared to what was typically seen in the neighborhood, but the owner's thoughtful design discussion sounded like the right solution. Chairman Rheaume said it would look acceptable when it was done.

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

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Mr. Johnson and Mr. Mulligan recused themselves from the petition. The alternates Mr. McDonnell retained his voting seat and Mr. Formella assumed a voting seat.

10) Case 8-10.

- Petitioners: The Provident Bank, owner and 25 Maplewood Avenue, LLC, applicant  
Property: 25 Maplewood Avenue  
Assessor Plan: Map 126, Lots 2  
Zoning District: Character District 5 and the Downtown Overlay District.  
Description: Remove existing structure and construct a 3-4 story mixed use building.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:
1. a) A Variance from Section 10.5A41.10D to allow the maximum finished floor surface of ground floor above sidewalk grade on the Maplewood Avenue face to be greater than 36".  
*If this request is denied, then:*
    - b) Variances from Section 10.5A41.10D to allow shopfront glazing along the Maplewood Avenue face to be less than 70%; and
    - c) to allow a minimum ground story height of 10' where 12' is required
  2. In addition to either Item 1a) or Items 1b & 1c, the following is requested:  
A Variance from Section 10.5A43.32 to permit a roof appurtenance height in excess of 10' beyond the maximum building height.

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

Attorney John Bosen was present to speak to the petition on behalf of the applicant. He introduced the CEO of Provident Bank Dave Mansfield, the architect Lisa DeStefano, and the developer Steve Wilson. Attorney Bosen distributed a handout to the Board, stating that the plans were updated to include a dome that would screen the roof mechanicals. He reviewed the petition and criteria in detail.

In response to Chairman Rheume's questions, Attorney Bosen said that the maximum that the screen would intrude above the 10-ft appurtenance was four feet. He said the glazing on the Maplewood Avenue side of the building was to create an inviting pedestrian experience, and that planter boxes and benches were also planned.

Vice-Chair LeMay asked how much the average grade affected the 10-ft building height variance. Mr. Wilson said the grade change was approximately 6-1/2 feet from the north Avenue side to the Hanover Street side, and the storefront on Hanover Street was 12 feet floor-to-floor. He said they had to step the floor elevation up at the garage to enter it from the alley without a big ramp, so it almost came in at the correct grade. He said the garage needed only 10 feet floor-to-floor. He said the retail space met the Ordinance but that the garage had to be changed.

Chairman Rheume asked what would be in the retail space on the corner of Hanover Street and Maplewood Avenue. Attorney Bosen said it would be a traditional bank branch and teller area.

**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**

Chairman Rheume noted that the Staff Memo stated that all the variances would be approved and that the only question was what was violating the 10-ft height. He said the ten feet were allowable and that the applicant was asking for four feet of additional relief, so the Board was allowing them to go in excess. He suggested a stipulation that it be no more than four feet.

*Mr. Lee moved to **grant** the variances, with the following stipulation:*

- That the appurtenance be no more than four feet beyond the 10-ft maximum.*

*Mr. Parrott seconded the motion.*

Mr. Lee noted that the HDC thoroughly vetted the request and said that tearing the old building down would improve the neighborhood. He said that granting the variances would not alter the essential characteristics of the neighborhood or pose a hazard to the public's health, safety, and welfare. It would observe the spirit of the Ordinance and would do substantial justice because the applicant would get a nice-looking building on a challenging lot. He said the values of surrounding properties would not be diminished and that not granting the variances would result in unnecessary hardship to the applicant.

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

Chairman Rheume said he would support the motion. He noted that what drove the majority of the requirements was the slope of the lot, the underground parking, and the topography of the lot. He said the height of the roof appurtenance was driven by an aesthetic consideration of mechanicals as well as the desires of the HDC and the Planning Department staff working to try and get coordination in various buildings in the neighborhood. He said that capping the appurtenance at four feet would provide relief and thought it was a reasonable request for use.

*The motion **passed** by unanimous vote, 6-0*

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**IV. ADJOURNMENT**

*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