

**MINUTES of the
BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
Remote Meeting via Zoom Conference Call**

7:00 P.M.

JULY 21, 2020

MEMBERS PRESENT: Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, John Formella, Arthur Parrott, Alternate Chase Hagaman

MEMBERS EXCUSED: Chairman David Rheame, Alternate Phyllis Eldridge

ALSO PRESENT: Peter Stith, Planning Department

Vice-Chairman Johnson was the Acting Chair for the meeting. Alternate Hagaman took a voting seat for all petitions.

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meeting of June 16, 2020

Mr. Parrott recused himself from the vote.

*The minutes were **approved** as presented by unanimous vote, 6-0.*

II. PUBLIC HEARINGS – NEW BUSINESS

A) Petition of **Sean Murphy, Owner**, for property located at **470 Lincoln Avenue** wherein relief was needed from the Zoning Ordinance for renovation of existing home which includes the following: 1) A Variance from Section 10.521 to allow a) a 4' right side yard where 10' is required; b) an 11' front yard where 15' is required; and c) 30% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 133 Lot 45 and lies within the General Residence A (GRA) District.

Mr. Parrott was recused from the vote due to technical difficulties.

SPEAKING TO THE PETITION

The applicants Sean and Elizabeth Murphy were present to speak to the petition. Mr. Murphy reviewed the petition and criteria and noted that the abutters were in support of the project.

Mr. McDonell asked the applicant how his situation was unique from his neighbors relating to the building coverage. Mr. Murphy said his lot was below the standard code of 7500 square feet and was unique because it was 5000 square feet. Mr. Hagaman asked if the house could be extended to the rear so that the square footage could be added to the back end and the garage could be pushed back. Mr. Murphy said reconfiguring the kitchen would be daunting and costly.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

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

Mr. McDonell said he was more concerned with the building coverage than the setbacks and thought what was proposed was a very reasonable addition and renovation. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said it would not conflict with the light and air purposes of the setback and building coverage requirements or alter the essential characteristics of the neighborhood. He said the design was a nice one that was in keeping with the neighborhood, had the best feasible configuration, and made sense. He said substantial justice would be done because the benefit to the applicant to make better use of the property would outweigh any harm to the general public. He said granting the variances would not diminish the value of surrounding properties because it was a tasteful addition and renovation and would likely increase property values. Regarding hardship, he said the special conditions of the property was that it was on a corner, which impacted the setback request. He said the size of the lot didn't really distinguish it from every lot in the area, but the fact that it existed on the corner spoke to the setback requirements of a corner lot and the location of the existing structure, and the fact that the building was the way it was spoke to the building coverage request conditions. He said the building could be built upward to try to avoid running into the building coverage requirements and needing relief for that, but it wouldn't make sense in that context. Therefore, the property had special conditions that distinguished it from others in the area and there was no fair and substantial relationship between the general purpose of the ordinance and their application in that case. He said the proposed use was a reasonable one, a single-family home that would stay that way.

Mr. Hagaman concurred, adding that rearranging the entire house to put an addition on would be silly, especially considering that the request for a variance wasn't extreme. He said the requirement was 15 feet but could be 13 feet and the applicant was asking for 11 feet, and the way the property was situated relative to the neighboring properties made a lot of sense.

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

B) Petition of Chris & Jaime Dunaway, Owners, for property located at 253 Melbourne Street, wherein relief was needed from the Zoning Ordinance for renovation of existing dwelling

including a one-story rear addition and vertical expansion of existing roof which requires the following: 1) A Variance from Section 10.521 to allow a) a 14.5' front yard where 30' is required; b) an 8' right side yard where 10' is required; and c) 21% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 233 Lot 88 and lies within the Single Residence B (SRB) District.

Mr. Parrott was recused from the vote due to technical difficulties.

SPEAKING TO THE PETITION

The applicants Chris and Jaime Dunaway were present. Mr. Dunaway reviewed the petition, noting that they wanted to expand the house to make the finished attic on the second story a full living space. He said they also wanted to expand the kitchen. He reviewed the criteria and said their neighbors were very supportive of the project.

Mr. Mulligan said the front yard setback relief was reasonable but asked whether the side yard setback relief request was necessary because it looked like it was just two feet for extra decking. Mr. Dunaway said the current width of the deck was 10 feet but didn't leave much room to fit a table for four people, based on where the side door was. He said increasing it two feet would allow extra space to move around. Mr. Mulligan asked how many feet the deck would be off the ground, and Mr. Dunaway said it would be 24-30 feet due to the property's slope.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Gary Morin of 238 Melbourne Street said he lived across the street from the applicant and was in favor of the project because it was reasonable and met all the criteria.

Mr. Stith noted that a letter was received from a neighbor who had concerns about the project.

No one else was present to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

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

Mr. Mulligan said the applicant was working with a very modest home that was substandard by current standards, so it was difficult to find a way to appropriately improve it on such a small lot without requiring some relief. He said the front yard setback relief wasn't significant because the front yard wasn't very useful, and the right yard setback was pretty much the only significant variance requested for the deck because the proposal was reasonable and the applicant needed leeway to make use of the deck. He said the applicant wasn't proposing to increase the dwelling structure into that setback, so it was a natural expansion of a very small home on a small lot and

met the criteria. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance because the essential characteristics of the neighborhood would remain and the public's health, safety, or welfare would not be impacted. Substantial justice would be done because the loss to the applicant if he were required to have strict conformance to the ordinance would not be counterbalanced by any gain to the public. He said the granting the variances would not diminish the value of surrounding properties because the project was a substantial upgrade and enhancement to the property and would bring code compliance and other modernizations to the home that would enhance the value of surrounding properties. He said the special conditions of the property relating to hardship were the topographic features that included a slope, a substandard lot that had less than half of the required lot area, and a very small home that needed relief for any improvements that could be undertaken realistically. He said there was no fair and substantial relationship between the purpose of the setback and lot coverage requirements and their relationship to the property and that the use was a reasonable one, a residential use in a residential zone, and met all the criteria.

Mr. Lee concurred and said it was a tastefully-designed project that would add to the functionality of the house and allow the owners to enjoy the home more.

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

C) Petition of **39 Cass Street, LLC, Owner**, and **Amy Dutton, Applicant**, for property located at **39 Cass Street** wherein relief was needed from the Zoning Ordinance to replace an existing structure with a new single-family dwelling which requires the following: 1) A Variance from Section 10.521 to allow a) a 5' left side yard where 10' is required and b) a 6.5' right side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 156 Lot 9 and lies within the General Residence C (GRC) District.

Mr. Parrott was recused from the vote due to technical difficulties.

SPEAKING TO THE PETITION

The applicant Amy Dutton representing the owners was present and reviewed the petition, noting that the house was bought as an investment in 2018 and was destroyed by a fire the following year. She said the owners would take all precautions during the excavation and would rebuild in the existing footprint. She reviewed the criteria and said they would be met.

Mr. Hagaman asked if there were other measures taken besides the fence to protect the neighbors' foundations from the demolition. Ms. Dutton said there would be no blasting that would impact the neighbors' foundations. She said the existing front structure would be removed and a bridge built over it for the excavation materials. She said the excavation would not go beyond the setbacks and there would be chain-link fences and barriers for buffers.

The owner and contractor Chris Martin was present and said filter fabric would protect abutters from any runoff or airborne debris. He said the excavation would go from the back to the front and would be at least twelve feet away from the abutter.

SPEAKING IN FAVOR OF THE PETITION

Owner Kristin Martin agreed that everything would be done to minimize impacts.

Owner Chris Martin said he and his wife would pay homage to the original Cape structure.

SPEAKING IN OPPOSITION TO THE PETITION

Sharon Finley of 29 Cass Street said her lot was on the 5-ft side of the half-foot setback and was the same size and frontage as the applicant's lot, and her New Englander left ten feet on each side and plenty of room for a driveway, so it wasn't true that only that particular Cape would fit on the applicant's lot. She said the Fire Department had to knock down her fence to access the home and that most of the debris from the fire went into her side yard, so she knew that five feet wasn't a sufficient buffer for her property. She said the applicant should consider turning the dimensions of the house around so that it didn't butt up against the abutters on each side.

SPEAKING TO, FOR, OR AGAINST THE PETITION

The applicant Ms. Dutton said the house existed on the footprint. She said construction was expensive, and taking everything down and pulling out the existing foundation would force them to build straight up for what would be a New Englander and would add a hardship to the Martins.

Hubert Khal of 52 Cass Street said he had nothing against the project but thought the applicant should take the opportunity to add off-street parking to help the neighborhood.

Sharon Finley said she agreed that off-street parking would be an asset.

Kristin Martin said she would include off-street parking if it were easy and affordable to redesign the house, but she had a limited budget and had to get the property up and running again.

No one else was present to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

Mr. Formella said the applicant had the right to rebuild in the existing footprint and was only before the Board due to the slight increases in height and floor space. He said he respected the abutters' points but they didn't relate to the increased height of the home, and that he would be concerned if the height increase blocked the view or affected light and air. He said the five foot setback was small but existed, and because the home burned, he found it hard not to be willing to allow the applicant to rebuild it in place with only a slight increase in height and floor space.

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

Mr. Formella referred to his previous comments and said granting the variances would not be contrary to the public interest or to the spirit of the ordinance and would not alter the essential characteristics of the neighborhood because the home would be rebuilt within the existing footprint and wouldn't be much higher. He said the project would not threaten the public's health, safety, or welfare but would improve it because a new code-compliant home would replace an unsound structure. He said substantial justice would be done because not allowing rebuilding in the existing footprint would be a loss to the applicant, who would have to change the orientation of the house, which would significantly increase the cost of the rebuild and outweigh any gain to the public. He said granting the variances would not diminish the values of surrounding properties and would likely increase them. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because any nonconformities for which variances were sought already existed, like the nonconforming structure that was damaged by fire. He said the conditions were unique because the owners had the right to rebuild and all wanted what to increase the height and floor space. He said there was no fair and substantial relationship between the setback requirements and their application to the ordinance and that it was a permitted use in the zone. He said the variances should be granted.

Mr. Hagaman concurred. He said the Board wasn't talking about a bare lot but a property that had an existing structure and would be rebuilt in the same footprint. He said it would be great to improve the parking and setbacks, but it wasn't realistic or financially feasible. He said the variance requests were reasonable and by right. As to whether it was contrary to the public interest, he said the objections made by the abutters were concerns about the impact of the demolition and reconstruction, and the applicant was taking measures to limit those impacts.

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

D) Petition of the Craig Willever Revocable Trust and the Melinda Willever Revocable Trust, Owners, and Dean Katiniotis, Applicant, for property located at 100 Jones Avenue wherein relief was needed from the Zoning Ordinance to demolish the existing garage and construct new attached garage which requires the following: 1) A Variance from Section 10.521 to allow a 3.5' left side yard where 10' is required. Said property is shown on Assessor Map 221 Lot 11 and lies within the General Residence A (GRA) District.

Mr. Parrott resumed his voting seat.

SPEAKING TO THE PETITION

The owner Craig Willever and the applicant Dean Katiniotis were present to speak to the petition. Mr. Katiniotis said the property was previously upgraded and that the only thing left was to rebuild the dilapidated garage. Mr. Willever noted that they needed sixteen feet to open the garage doors due to the stairway and that the abutters approved of the project.

In response to the Board’s questions, Mr. Katiniotis said the existing left side setback was five feet and that the living space on the proposed garage’s second level would be a playroom.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

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

Mr. Mulligan said there was already a nonconforming encroaching garage on the lot that violated the side yard setback. He said he understood the applicant’s dilemma because the existing garage was useless and a lot of work was done to upgrade the house, so the project was a natural continuation of that upgrade. He said the variance request was reasonable, given the existing lot and the desire to add some living space to the garage rather than make an addition to the main dwelling that would compromise the backyard, and that the project seemed to have a lot of support from the neighbors. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance and the essential characteristics of the neighborhood would not be changed, nor the public’s health, safety, or welfare impacted. He said there was already an existing violation of the side yard setback and even with that violation, a retaining wall separated the property from the neighbor’s, so there was a natural barrier that would prevent any encroachment from affected light, air, and so on. He said substantial justice would be done because if the applicant were required to conform to the 10-ft left side setback, his loss would not be outweighed by any benefit to the public because the garage couldn’t be upgraded. He said granting the variance would not diminish the values of surrounding properties, noting that the neighbors were in favor and there would be new construction and code compliance. He said literal enforcement of the ordinance would result in unnecessary hardship because the property had special conditions consisting of an oddly configured lot with a trapezoid shape and a pre-existing nonconforming garage that would be upgraded in a meaningful way. He said the amount of relief was not that significant given what already existed, so there was no fair and substantial relationship between the purpose of the side yard setback and its application to the property. He said it was a reasonable residential use in a residential zone and should be granted.

Mr. Parrott concurred and had nothing to add.

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

E) Petition of **Kenneth Riley, Owner**, for property located at **5 Hoover Drive**, wherein relief was needed from the Zoning Ordinance to install a 6 foot tall fence along the front property line which requires the following: 1) A Variance from Section 10.515.13 to allow a 6 foot tall fence in height to be located in the front yard. Said property is shown on Assessor Map 268 Lot 42 and lies within the Single Residence B (SRB) District.

The petition was withdrawn by the applicant.

F) Petition of **Wentworth Douglass Hospital, Owner**, and **Barlo Signs, Applicant**, for property located at **67, 73, 121 Corporate Drive**, wherein relief was needed from the Zoning Ordinance for re-facing three existing directional signs wherein relief was required from the Pease Development Authority Zoning Ordinance which includes the following: 1) A Variance from Section 306.01(d) to allow 432.83 square feet of sign area where 200 square feet per lot is the maximum. Said properties are shown on Assessor Map 303 Lots 04, 05 & 08 and lie within the Airport Business Commercial (ABC) District.

Mr. McDonell recused himself from the petition.

Acting-Chair Johnson said the Board would only recommend approval or not. Mr. Stith said the Pease Development Authority (PDA) Review Board had already approved the application.

SPEAKING TO THE PETITION

Todd Sigmon representing Wentworth Douglass Hospital and the applicant Brandon Currier were present to speak to the petition. Mr. Currier said patients had a difficult time locating the medical offices. He said a case study was performed by placing temporary sandwich boards near the directional signs that decreased the confusion. He said they needed an additional 41 feet that would be split up between the existing 3-way directional signs and would increase safety. He said the signs would only be for the property's internal use and could not be read from Corporate Drive. He said the signage for the buildings was not sufficient, noting that over 200 patients showed up at the wrong building. He said the signs would be purely directional and not meant for advertising. He noted that the abutter Northeast Rehab was very supportive of the project.

Mr. Hagaman noted that the numbers for the buildings were dropped to the very bottom of the signs, and he asked if people would be able to see them at the bottom versus the top. Mr. Sigmon said they had done several versions of the sign and that the numbers were actually moved to the top left corner for a cleaner, easier look.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak to the petition, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

*Mr. Lee moved to **recommend approval** of the project to the PDA, and Mr. Parrott seconded.*

Mr. Lee said it was a reasonable application that the PDA had already approved and that he saw no downside for installing new signs that would ease the patients' confusion. He addressed the PDA's criteria and stated that the project would have no adverse effect or diminution of values on surrounding properties, would benefit the public interest, and would do substantial justice. He

said the proposed use would not be contrary to the spirit of the zoning rule and that denying the variance would result in unnecessary hardship to the applicant.

Mr. Parrott concurred and said it was just a technical change in the content of the signs and not the physical size, so it was an easy thing to approve and made a lot of sense for usability.

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

G) Petition of **Ali Kodal & Pamela Henry, Owners**, for property located at **845 South Street**, wherein relief was needed from the Zoning Ordinance to demolish the existing 1 car garage and construct a new 2 car garage which requires the following: 1) A Variance from Section 10.521 to allow a 5' right side yard where 10' is required. 2) A Variance from Section 10.571 to allow an accessory structure to be located closer to the street than the principal building. 3) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 132 Lot 23 and lies within the General Residence A (GRA) District.

Mr. Mulligan and Acting-Chair Johnson recused themselves from the petition. Mr. Parrott assumed the role of Acting Chair.

SPEAKING TO THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant and said the proposal was to demolish the existing garage and build a two-car garage closer to the right side yard property line, and also expand a nonconforming structure because the existing and proposed garages were in front of the residence. He reviewed the criteria, noting that the 1911 structures were built before zoning and that there was no other reasonable area to place the garage because it couldn't be moved substantially back from the street due to a grade drop-off.

There were no questions from the Board.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. McDonell said the request was reasonable, to replace the existing one-car garage with a two-car garage that was mostly on the existing location of the one-car garage and would infill the space between the home and the garage. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, noting that he didn't see any

conflict between the purposes of the ordinance's setback provisions and the proposed use. He said the essential characteristics of the neighborhood would not be altered and there would be no impact to the public's health, safety because the proposed structure would be the same as the existing one, only in a two-car form, and there would be no real increase in height, if any. He said substantial justice would be done because the obvious benefit was to the applicant, who would get space to park two cars, and there would be no detriment to the public. He said granting the variances would not diminish the values of surrounding properties, noting that there was a slight decrease in the setback by 1-1/2 feet from what existed that wasn't nearly substantial enough to cause any concern. He said literal enforcement of the ordinance would result in unnecessary hardship to the applicant. He said the property's special conditions were that it was a corner lot and the existing home and grade of the lot that dictated the garage's location, which was the most feasible. He said there was no fair and substantial relationship between the purpose of the ordinance's provisions and their application to the case. He said it was a reasonable use, a residential use in a residential zone, and should be approved.

Mr. Lee concurred and said a two-car garage would be more in keeping with the house's scale. Mr. Parrott said it was a nice upgrade to what was already a nice property

The motion passed by unanimous vote, 5-0.

H) Petition of **Peter & Morgan Caraviello, Owners**, for property located at **366 Islington Street**, wherein relief was needed from the Zoning Ordinance to replace 2 existing heat pumps with one heat pump which requires the following: 1) A Variance from Section 10.5A41.10A to allow a 3.5' side yard where 5' is the minimum required. Said property is shown on Assessor Map 145 Lot 17 and lies within the Character District 4-L2 (CD4-L2) District.

Mr. Mulligan resumed his voting seat. Mr. Johnson resumed his seat as Acting-Chair and Mr. Parrott resumed his regular voting seat.

SPEAKING TO THE PETITION

Project architect Anne Whitney was present on behalf of the applicant. She said the request was to remove the two heat pumps on the right side of the home and replace them with a new heat pump next to the existing AC condenser. She said the abutter was in agreement and also had two heat pumps on their side of the property, so they felt it was the best location. Ms. Whitney said the pump would be concealed from the abutter and from the street.

Acting-Chair Johnson asked if the new unit would be wall mounted. Ms. Whitney said both the new heat pump and the existing condenser would be ground mounted and lower than the top of the fence line. Acting-Chair Johnson also noted that the decibel level would be lower.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

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

Mr. Parrott said the request was similar to ones the Board had seen in the past that had not caused any problems, and that there was little opportunity to do something different than what was proposed, given the configuration of the lot and buildings. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because it wouldn't conflict with the purposes of the ordinance, would not affect the essential characteristics of the neighborhood, and would pose no threat to the public's health, safety or welfare because there were already similar heat pumps and condensers nearby. He said substantial justice would be done because it was an obvious benefit to the applicant and no harm to the general public. He said granting the variance would not diminish the values of surrounding properties because that type of unit was well accepted and found throughout the city, and were becoming more quiet and friendly to the environment. He said the building and property lines were what they were and there was very little space to put the units, which left no other useful alternatives, so the hardship was the physical configuration of the units as well as the location of the buildings and property line. He said the request met all the criteria and should be approved.

Mr. McDonell concurred and had nothing to add.

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

D) Petition of **Carrie Richesson, Owner**, for property located at **101 Martha Terrace**, wherein relief was needed from the Zoning Ordinance to construct a 24'x 24' garage attached to the existing house by a 10'x 10' mudroom which requires the following: 1) A Variance from Section 10.521 to allow a) an 8' secondary front yard where 30' is required; and 2) 17% building coverage where 10% is the maximum allowed. Said property is shown on Assessor Map 283 Lot 5 and lies within the Single Residence A (SRA) District.

SPEAKING TO THE PETITION

The applicant Carrie Richesson was present and reviewed the petition. She said the neighbors were in support and that the placement was the only practical location without incurring excessive costs and detrimental effects. She explained that the side street was not a through one and ended next to her lot. She said she previously got the Board's approval for the same proposal but for a 20'x24' garage, and that the Board had suggested that the garage entrance come off Patricia Drive instead of Martha Terrace. She said her contractors thought four additional feet would make the garage more functional and thought the garage would look nicer coming off Martha Terrace. She said the unique lot was a corner one with an unusual configuration.

There were no questions from the Board.

SPEAKING IN FAVOR OF THE PETITION

Mark Herrholz of 126 Martha Terrace said all the neighbors thought the garage and mudroom would be a great addition to the neighborhood, that most of the homes had two-car garages and small lots, and that the garage couldn't be placed anywhere else due to the septic system.

Anne Sullivan of 166 Martha Terrace said the garage wouldn't look awkward, especially if it came out on Martha Terrace. She said no neighbors had a problem with the project.

DECISION OF THE BOARD

Mr. Stith clarified that the advertisement was for an 8-ft secondary front yard and suggested that the Board add a half-foot plus/minus to account for the 7-1/2 foot distance.

*Mr. Formella moved to **grant** the variances as presented, with the following stipulation:*

- *That a secondary front yard setback with a half-foot plus/minus be considered.*

Mr. Lee seconded.

Mr. Formella said that, at first glance, the front yard setback request seemed significant, but when considering the property's history and circumstances, the secondary front yard setback was really more of a driveway than a street and it was a much better street to have setback relief from than the previous request. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance, seeing that there was a unique amount of support from the neighbors. He said it would not alter the essential characteristics of the neighborhood nor impact the public's health, safety, or welfare. He said substantial justice would be done because there would be no gain to the public in denying the variance but would be a loss to the applicant because it would remove a better option for the garage and the neighborhood. He said granting the variances would not diminish the values of surrounding properties and thought they would be enhanced because building a garage off Patricia Drive instead of Martha Terrace would be safer and better for the neighborhood. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property's special conditions were that it was a unique property that already had variance relief granted previously for a different street, and the variance request approval would offer very similar relief off of a different street as well as similar building coverage relief. He said the garage would be oriented in a safer way, the lot was a corner one that needed additional relief, and there would be more space for maintaining light, air, and so on. He said there was no fair and substantial relationship between the normal purposes of the dimensional requirements and their application to the property. He said the proposed use was a reasonable one and should be approved.

Mr. Lee concurred and had nothing to add.

The applicant Ms. Richesson asked about having the same language as the previous street option. Acting-Chair Johnson said the Board didn't normally approve options but thought it made sense because the applicant's case was unique. Mr. Formella said he would support it because the applicant had the previously-granted relief and the additional relief gave her a second option. Mr.

McDonnell noted that the proposed garage was a different size. It was agreed to amend the motion by stipulating that as long as the secondary front yard complied with the relief granted, the garage entrance could face either Patricia Drive or Martha Terrace.

Mr. Formella amended his motion as follows:

*Mr. Formella moved to **grant** the variances as presented, with the following stipulation:*

- *As long as the secondary front yard complies with the relief granted, the entrance to the garage can face either Martha Terrace or Patricia Drive.*

Mr. Lee concurred and had nothing to add.

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

J) Petition of the **Kathleen Belavitch Revocable Trust, Owner**, for property located at **354 Lincoln Avenue**, wherein relief was needed from the Zoning Ordinance to demolish the existing shed and construct a new 80 sq. ft. addition to an existing garage which includes raising the height of the garage 2 feet and requires the following: 1) A Variance from Section 10.521 to allow a) a 1'-6" side yard where 13'6" is required; b) a 5' rear yard where 13'6" is required; and c) 33.5% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 130 Lot 28 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The property owner James Horne was present and reviewed the petition. He noted that he was previously approved for 36.1 percent building coverage, but the shed and existing garage were too small and didn't provide much storage. He said he also wanted to raise the garage a few feet.

Mr. Mulligan said the house was one in the nicest in Portsmouth and commended the applicant for seeking upgrades to the garage, which was very small for a house that large. He asked whether re-orienting the outbuilding and attaching it to the side of the garage that was closest to the house would affect the backyard's landscaping and hardscape. Mr. Horne said it would block a path from the driveway to the rear yard and that the hardscape was built out.

SPEAKING IN FAVOR OF THE PETITION

Erica (no last name or address given) said she lived down the road from the applicant and thought the project was fine.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else was present to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

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

Mr. Mulligan referred to his previous comments and said the request was reasonable, noting that the house was a large dwelling with a really tiny garage. He said the request wasn't much of an upgrade to the garage because it was a vertical expansion and a replacement of a shed with an attachment on the rear. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance, would not affect the essential characteristics of the neighborhood, and would not implicate the public's health, safety, or welfare. He said substantial justice would be done because the loss to the applicant would far outweigh any gain to the public if he could not do the modest improvement. He said there were additional setback violations as a result of the project but nothing significant. He said granting the variances would not diminish the values of surrounding properties, noting that the property was one of the nicest in Portsmouth and he could not imagine that any project the owner did would not be in keeping with what he had previously done. He said the hardship was the property's special conditions of having a huge disparity in the size of the home versus the garage as well as being on a corner lot, which affected the way the Board looked at setbacks. He said there was no fair and substantial relationship between the purposes of the ordinance and its application to the property. He said it was a reasonable use, a residential use in a residential zone, and met all the criteria.

Mr. Lee concurred and had nothing to add.

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

III. OTHER BUSINESS

There was no other business.

IV. ADJOURNMENT

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Joann Breault
HDC Meeting Recording Secretary