

**BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting via Zoom Conference Call

7:00 P.M.

SEPTEMBER 15, 2020

MINUTES

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

MEMBERS ABSENT: None

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume noted that Petition C, 50 New Castle Avenue, had been withdrawn by the applicant.

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meeting of August 18, 2020

*It was moved, seconded, and passed unanimously (7-0) to **approve** the minutes as presented.*

II. OLD BUSINESS

A) Request of **Arbor View & the Pines, Owners**, for property located at **145 Lang Road** for a one year extension of the variances that were granted on November 20, 2018. Said property is shown on Assessor Map 287 Lot 1 and lies within the Garden Apartment/Mobile Home Park (GA/MH) District.

Vice-Chair Johnson recused himself from the petition, and Alternate Ms. Eldridge assumed a voting seat.

Chairman Rheaume noted that the applicant submitted a letter to the Board explaining his reasoning for the one-year extension and that he had no building permit as yet.

*Mr. Mulligan moved to **grant** the one-year extension, and Mr. Parrott seconded.*

Mr. Mulligan said the project was substantial and that it wasn't unreasonable to allow an extension. He noted that the applicant requested it within the two-year timeframe per the ordinance, so he saw no reason not to grant it. Mr. Parrott concurred, adding that the request was

timely and had almost become pro forma. Chairman Rheume cautioned against indicating that two-year extensions were automatically granted, noting that the applicant had two years to get the project done, but he agreed that it was a large project and was no doubt impacted by COVID.

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

III. PUBLIC HEARINGS – NEW BUSINESS

A) Petition of **Nathan & Stacey Moss, Owners**, for property located at **5 Pamela Street** wherein relief was needed from the Zoning Ordinance to construct a one-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow 26% 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 292 Lot 119 and lies within the Single Residence B (SRB) District.

Vice-Chair Johnson resumed his voting seat, and Ms. Eldridge returned to alternate status.

SPEAKING TO THE PETITION

The applicant Nathan Moss reviewed the petition and criteria and said they would be met.

Mr. Stith reviewed the Board's prior approval of the petition, stating that the applicant was before the Board in 2018 to extend the garage and received a 5-ft side yard setback, but the building coverage was calculated in error. He said there was now a more descriptive tabulation of the lot coverage that showed the existing coverage at 24 percent, so the applicant should have gotten a building coverage setback back in 2018. As a result, the building coverage was going from 24 percent to 26 percent.

There were no questions from the Board. Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. McDonell said the request was straightforward and that it was a small lot with a relatively modest ranch home and a modest addition in terms of square footage, and he didn't think it would change the effect of what was there. He said it was a reasonable request, notwithstanding that the building coverage increase was greater than the actual two percent. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance and the

proposed use would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said it was a modest addition and that similar additions were done up and down the block, and that it was common for small homes to be added onto over the years. He said substantial justice would be done because the benefit to the applicant was obvious and wasn't outweighed by any harm to the public. He also noted that no neighbors had spoken against it and that he couldn't see that neighbors or the general public would be concerned with an addition like that. He said granting the variances would not diminish the values of surrounding properties, noting that he had heard no testimony to that effect. He said the project would benefit the property, which would result in benefiting surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property that distinguished it from others in the area. He said the property was similar to others in the area, but the lot's size was smaller than the required minimal lot area and the modest addition wouldn't implicate special conditions that the Board could distinguish from other properties in the area. He saw no relationship between the purpose of the building coverage ordinance and the application because the total building coverage in that zone was limited to 20 percent. He said the proposed use was reasonable and would remain what it was, a modest single-family home, and he said the Board should approve the request.

Mr. Parrott concurred, adding that it was obviously a small tasteful addition situated toward the center of the lot and was as far away from the neighbors as it could be, so it would not have a detrimental effect on the neighborhood and easily met all the criteria.

The motion passed by unanimous vote, 7-0.

B) Petition of **Stephen & Bridget Viens, Owners**, for property located at **78 Marne Avenue** wherein relief was needed from the Zoning Ordinance to replace existing 1 car garage with new 2 car garage and mudroom which requires the following: 1) Variances from Section 10.521 to allow a) 27% building coverage where 25% maximum is allowed; b) a 9.5' secondary front yard where 15' is required; and c) an 11.5' rear yard where 20' 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. Said property is shown on Assessor Map 222 Lot 40 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicants Stephen and Bridge Viens were present. Mr. Viens reviewed the petition and criteria. He said all his neighbors were in favor of the project.

Mr. Mulligan noted that the driveway came off Marne Avenue and asked if the applicant would abandon that driveway. Mr. Viens said there would only be 10 feet from the street to the garage door, which wouldn't leave much space, and that one of the bays was only 16 feet due to the new mudroom. He said he hoped to keep both driveways.

Mr. Stith said only one driveway per lot was allowed, and if the applicant kept both driveways, he would have to request another variance. Mr. Mulligan asked if the Department of Public Works would have to approve a curb cut for the new driveway, and Mr. Stith agreed. Mr. Mulligan said the plan showed that the new addition would be 11'8" from the rear yard, but the relief advertised was 11'5". Mr. Stith said the Planning Department had been using the half-foot instead of the plus/minus measurement. Vice-Chair Johnson asked the applicant if he had considered putting the new garage more toward the front yard or making it an ell-shaped one, noting that the Cape had an extended addition on both sides that made for a long building. Mr. Viens said he had not considered it because it was all about creating a mudroom.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mulligan said the property had been added onto a few times, making the structure long, but it was set back pretty far from Marne Avenue such that there was no usable backyard, so he could understand why the owner wouldn't want an ell-shaped garage. He said it was also a good way to take advantage of the fact that Verdun Avenue wasn't much of a traveled street. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the essential residential character of the neighborhood would remain intact and the public's health, safety, and welfare would not be implicated. He said it would result in substantial justice because the loss to the applicant if the Board were to require strict compliance with the ordinance would outweigh any gain to the public. He said granting the variances would not diminish the value of surrounding properties but would improve them, noting that a mudroom and a two-car garage were amenities normally seen in modern homes. He said the special conditions of the property were that it was a corner lot on two roads that weren't traveled much. He said there was no fair and substantial relationship between the purpose of the setback and building coverage ordinances and their application to the property. He said it was a small amount of relief requested and was a residential use in a residential zone and met all the criteria.

Vice-Chair Johnson concurred, noting that Mr. Mulligan made a good point about the usable space within the yard. He thought a more compliant concept could have been worked out for the front yard, but he realized that it was a tight neighborhood, and it helped that there was an open view across the street. He said the project should be approved.

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

C) WITHDRAWN Petition of **Timothy & Alexandra Lieto, Owners**, for property located at **50 New Castle Avenue** wherein relief is needed from the Zoning Ordinance to construct a two-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow a 22' rear yard where 30' 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. Said property is shown on Assessor Map 101 Lot 33 and lies within the Single Residence B (SRB) District. **WITHDRAWN**

*It was acknowledged by the Board that the applicant had **withdrawn** the petition.*

D) Petition of **KSC, LLC, Owner, and Lafayette Animal Hospital, LLC, Applicant**, for property located at **2222 Lafayette Road** wherein relief was needed from the Zoning Ordinance to allow a Veterinary Clinic/Hospital which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said property is shown on Assessor Map 267 Lot 2 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

SPEAKING TO THE PETITION

Attorney Brad Lown was present on behalf of the applicant and reviewed the petition and special exception requirements. He stated that the clinic usually got 4-8 patients per hour for 30-minute visits and rare overnights; there were two veterinarians, 12 staff people and 29 parking spaces; and the clinic was just being moved down the street and across the road to a slightly larger space.

There were no questions from the Board. Chairman Rheaume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

David McGrath said he was the owner of KSC, LLC and was happy to be part of the community.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the special exception request, and Mr. Parrott seconded.*

Mr. Lee said it was a simple request, just relocating the same business across and down the road to a better location. He said granting the special exception would create no hazard to the public or adjacent properties on account of odors, smoke, noise, fire, explosions, and so on. He said it would create no traffic safety hazards or substantial increase in the level of traffic in the vicinity and no excessive demand on municipal services, as well as no increase in stormwater runoff onto adjacent properties or streets.

Mr. Parrott concurred, noting that the property had been vacant for some time and that it was good to see it getting filled up. He said it was a benign use of the property and would fit in nicely with the neighborhood, and that it satisfied all the requirements and should be approved.

Chairman Rheume said that the only criterion that was potentially marginal was the increase in traffic, but the business would be moved from one side of the street to the opposite in a location suited for a small amount of incoming and ongoing traffic, so he thought it passed all the hurdles.

The motion passed by unanimous vote, 7-0.

E) Petition of **Kenton Slovenski, Owner**, for property located at **175 Grant Avenue** wherein relief was needed from the Zoning Ordinance to construct a two-story addition with an attached accessory dwelling unit which requires the following: 1) A Variance from Section 10.521 to allow a lot area of 13,950 square feet where 15,000 square feet is the minimum required. Said property is shown on Assessor Map 251, Lot 41 and lies within the Single Residence B (SRB) District.

Mr. Parrott recused himself from the petition, and Alternate Mr. Hagaman took a voting seat.

SPEAKING TO THE PETITION

Attorney Derek Durbin on behalf of the owner was present, as was the owner Kenton Slovenski. Attorney Durbin reviewed the petition and said the owner wanted to renovate his one-story ranch home to accommodate an ADU. He said it would be similar to other two-story homes in the area, and the ADU would be fully integrated into the vertical extension and would be living space for a family member. He also noted that the property was deficient and needed a lot of work.

Vice-Chair Johnson asked if there were other multi-family uses in the surrounding area. Attorney Durbin said he knew there were a few duplexes around but not a lot of multi-family uses. He said he had a list of all the ADUs permitted in Portsmouth and that there weren't many because not many lots met the 15,000 s.f. minimum in the ordinance. Mr. Hagaman asked if the purpose of the ADU was to provide housing for a family member rather than renting it out. Attorney Durbin said the goal was to provide an independent living space for the applicant's brother or another family member. Mr. Hagaman said the Board received a letter from someone concerned about the aesthetics of the design and placement of the bumpout, and he asked if the stairs could be put in the back so that no bumpout was required. Attorney Durbin said there was ledge in the back.

Vice-Chair Johnson asked Mr. Stith if the property would be considered a single-family home with an ADU or a two-unit property. Mr. Stith said the applicant would have to get a Conditional Use Permit first. He thought the home would be assessed as an occupancy of two instead of a two-family home, and that the applicant would have to be certified yearly to ensure that the ADU still met the criteria for an ADU. It was further discussed.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one was present to speak in favor of the petition.

SPEAKING AGAINST THE PETITION

Amy Dickinson said she was a resident of the neighborhood and was concerned about the ADU because she thought it would set a dangerous precedent for others in the neighborhood to start adding apartments that didn't meet the square footage requirement, would increase traffic, and wouldn't be maintained by a renter as well as it would be by an owner.

Chairman Rheume said the State of New Hampshire passed the ADU law to increase housing stock, and that one of the goals was that all communities must allow ADU units within single-family areas. He said the City was required to develop an ordinance around it to allow ADUs in single resident districts throughout Portsmouth.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Johnson said the applicant's neighborhood was the perfect application of the purpose of the ADU law overall because it had a less dense area infill and a fair amount of space per person as well as modest-sized properties, but he struggled with how to phrase the hardship eloquently. Mr. Hagaman agreed.

*Vice-Chair Johnson moved to **grant** the variance for the application as presented, and Mr. Hagaman seconded.*

Vice-Chair Johnson said he would echo his first few sentences about the application being appropriate. He said he lived in a similar neighborhood where the majority of residential properties came up short of the 15,000 s.f. criterion. He said granting the variance would not alter the essential character of the neighborhood or impact the public's health, safety, or welfare, and the spirit of the ordinance would be observed. He said one could look at this neighborhood and say that having an ADU was not meeting the character of the neighborhood, but the Board had to consider the current ordinances applied to the zone. He said there weren't a lot of properties with ADUs that were seen as a defining character, but the intent was reflected by changes in the ordinance and whether the size and density of the neighborhood were big enough to accept small uses like that. He said it was self-governing by the nature and size of the ADU as to how many people could live there and wasn't much different than everyone living in a single-family home. He said granting the variance would do substantial justice because the loss to the applicant if not granted would be greater than any perceived loss to the public or neighbors. He said the value of surrounding properties would not be diminished because the ADU would be a new addition to the housing stock and it was hard to argue that it wouldn't raise surrounding

property values. He saw no market decrease in values due to an ADU and thought it would increase resale values. He said literal enforcement of the ordinance would result in unnecessary hardship because the applicant had bought into the concept of what a Single Residence B Zone was and what the entitlements were and weren't, and he didn't feel that a one thousand plus or minus difference in square footage of the lot size undermined any of the ordinance's intent. He said it was a proven fact with other residences that a property of that size was capable of housing two units that were both small sizes.

Mr. Hagaman concurred. He said he had leaned heavily on how the hardship was presented by the applicant, and he thought what made the property unique compared to others was that it was positioned to do exactly what the applicant proposed to do. He said that was relatively uncommon, except for it being a relatively smaller lot than what was required. He said the special condition was that it checked all the boxes except for lot size, which was a unique thing not only for the neighborhood but for the city as a whole.

Chairman Rheume said that other New Hampshire communities were perhaps more affected by what the ADU law was trying to do, but that Portsmouth was an old community with a lot of established properties of two-acre lots with single-family homes, which used up a lot of available land to create those sorts of structures. He explained how the current environment was a lack of housing overall and also had an aging population that struggled to find smaller living spaces, and if they remained in their homes because they couldn't find smaller ones, it denied opportunities for younger families. He said the ADU law was designed to create a space that the aging population could take advantage of as well as continue to create housing opportunities for younger people who could serve as part of the workforce. He said if the City held applicants to the rigid standard of 15,000 square feet, they'd run the risk of defying the spirit of the ordinance and the spirit of the law behind the ordinance.

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

F) Petition of the **Rhonda Stacy-Coyle Revocable Trust, Owner**, for property located at **36 Richards Avenue** wherein relief was needed from the Zoning Ordinance to install a heat pump unit which requires the following: 1) A Variance from Section 10.521 to allow a 2' right side yard where 10' is required. Said property is shown on Assessor Map 136 Lot 14 and lies within the Mixed Residential Office (MRO) District.

Mr. Parrott resumed his voting seat, and Mr. Hagaman resumed alternate status.

SPEAKING TO THE PETITION

The heating unit consultant Sue Morrison was present on behalf of the applicant and reviewed the petition and criteria. She said the Historic District Commission (HDC) had approved it with a stipulation that a surrounding fence would hide the unit from view. She said she accounted for the spacing that the unit needed from the building structure for adequate air flow

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Formella moved to **grant** the variance for the petition as presented, and Mr. Lee seconded.*

Mr. Formella said that granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because it would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said no one would even know that the unit was there. He said substantial justice would be done because if the Board didn't grant the variance, it would be a loss to the applicant because the property couldn't have the heating unit, and there would be no gain to the public because they wouldn't have been harmed by the unit. He said granting the variance would not diminish the values of surrounding properties, noting that there was no evidence that it would do so. He said literal enforcement of the ordinance would result in unnecessary hardship to the applicant because special conditions of the property included a small lot, a small amount of outdoor space, and an existing nonconformity on the right sideyard. He said there was just a 2-ft setback where ten feet were required, so the Board wasn't creating any new nonconformity. He said there was no fair and substantial relationship between the purpose of the setback provision and its application to the property and that the proposed use was reasonable and should be granted.

Mr. Lee concurred and had nothing to add. Chairman Rheume said he would support the motion because the only concerns of the setback relief were the light and air to the neighbors, but the neighbor's property wouldn't be impacted because it was a multi-use one.

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

G) Petition of the **Kevin Shitan Zeng Revocable Trust, Owner**, for property located at **377 Maplewood Avenue** wherein relief was needed from the Zoning Ordinance to demolish an accessory building and construct a new free standing dwelling which requires the following: 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: a) a lot area per dwelling unit of 2,638 square feet where 7,500 is the minimum required; b) 43% building coverage where 25% is the maximum allowed; c) a 4.5' secondary front yard where 15' is required; d) a 3' left side yard where 10' is required; and e) a 5.5' rear yard where 20' is required. 3) A Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 141 Lot 22 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, as was the project architect Daniel Barton. Attorney Durbin said the existing building behind the main home predated that home and

was believed to have been a sail-making shop in the past, and that they proposed to demolish and replace it with a smaller carriage house structure. He said the HDC had a site visit and determined that the existing building was too structurally unsound to reconstruct. He said there would be two dwellings on the property to house family members. He reviewed the criteria and gave examples of other similar homes in the area that had ADUs.

Mr. Hagaman said the carriage house seemed to be equal to or more dominant than the main house. Mr. Barton noted the work session they had with the HDC, where it was decided that a new structure that was appropriate for the neighborhood should replace the existing one. He said the carriage house might look large but was really a small structure and its size was similar to the existing building. He said they reduced the roof pitch on one side of the building to replicate the front of the existing building and that the ridge height of the new gable wasn't too far off from the requirement. He said the building had a similar relationship in grade to the existing building.

Mr. Mulligan confirmed that the existing structure had not been used for a long time and could have been used as a dwelling before. He said the passageway was part of Jackson Hill Avenue and asked if it was a paper street. Attorney Durbin said it didn't meet the definition of a street but was shown as one on the City map. Mr. Mulligan said the existing conditions plan identified the passageway as a gravel lane and that the proposed stacked parking looked like it would back out into Maplewood Avenue traffic. He said stacked parking wasn't safe or appropriate for the property and asked if there was another way out of the property. Attorney Durbin said the property connected to Jackson Hill Avenue, which he thought the City maintained. He said the stacked parking was an existing condition due to the funky parking layout and that it worked for the property. He said cars would pull out of the lot and go up to Jackson Hill Avenue to the right. Mr. Mulligan asked if that was the way the applicant currently got out of the property, and Attorney Durbin said he wasn't sure. Mr. Mulligan asked what the improvement was in that case and how one would go up the gravel drive at the edge of the passageway and make a right turn. Mr. Barton said the Jackson Hill Avenue passageway was a thruway, but its grade increased in height above the applicant's property as one left Maplewood Avenue. He said the ADU was up against a tall embankment, so pulling into the driveway and being able to loop up through Jackson Hill Avenue would only be feasible if the grade was changed.

Chairman Rheume said the grade difference was apparent. He said the parking situation spoke to the criteria in terms of lot area per dwelling unit and thought the key factor was having two separate dwelling units. He said he had looked at the properties with ADUs that Attorney Durbin had referred to. He said one looked like a converted garage in a second dwelling unit that was quite a bit smaller than the main structure and fit the character of a garage, and another one was an older home with a new addition. He said a carriage house was usually a smaller structure. He said the main house was about 800-900 square feet and the proposed carriage house was 1400-1500 square feet but would be just a single-floor dwelling. He asked if the main house had second-floor space. Mr. Barton said the second floor was more of a loft or attic space. Chairman Rheume said the new structure would be substantially larger than the existing structure and would be more in keeping with the idea of an ADU. It was further discussed.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Mulligan referred to his previous comments and said he could not support the proposal because the requested lot area per dwelling was a third of what was required and half of what currently existed. He said jamming another residence into the property was problematic for a lot of reasons, and he recommended that the applicant do a redesign that addressed the parking configuration and eliminated the stacked parking backing out onto Maplewood Avenue. He said the petition met the hardship criteria because the property was unique, but the public's health, safety, and welfare were implicated and substantial justice would not be done. He said the loss to the public if the variances were granted would outweigh the gain to the applicant. Mr. Formella agreed. He said he could find a hardship on the lot area per dwelling unit because another dwelling unit could go there, but he felt that more work could have been done with the existing structure by reducing the footprint more. He noted that the proposed building was fairly large and that there was room to reduce it and make it more like a detached ADU, which might allow for configuring the parking in a safer way. He said there could be a proposal to get another unit on the lot that would require less building coverage. He said he could not support the petition and that he hoped it could be redesigned by reducing the size of the second structure.

Mr. Parrott agreed with Mr. Formella and Mr. Mulligan. He said the proposed building was very ambitious for the small lot, which was odd and challenging due to its topography. He said the proposal seemed to be built on the fact that there was a building there that apparently was never a dwelling before, but that it didn't matter because the issue was the available land. He said he was also concerned about the parking and thought backing out onto that busy part of Maplewood Avenue was very undesirable. He said when something new was designed, it should fix some of the existing problems. He said the proposal was too ambitious for the area and wouldn't work in the location, and that it wouldn't meet all the criteria, especially the first and second because it would be contrary to the public interest and to the spirit of the ordinance.

Mr. McDonell said he had been prepared to support a motion to approve because, given what was allowed as far as a multi-family dwelling in the zone and the lot's special conditions, he felt there was a necessary hardship. He said the dimensional requests for variances were all being decreased a bit, with the exception of the lot area per dwelling unit, and that got into the bigger reasons for the variance request to add another freestanding unit. However, he said he thought about the safety concerns that Mr. Mulligan brought up and agreed that there would be a threat to the public's safety, so he would support a motion to deny the variances.

Chairman Rheaume agreed with Mr. McDonell's argument that the neighborhood was filled with multi-family dwelling-unit single structures but didn't think multi-structures with multiple units were common for the neighborhood. He said the few examples they saw were bigger lots that looked more like they had separate outbuildings. He said the applicant's proposal was to spread the dwelling unit out all over the very small lot and occupy a lot of space, which squeezed the

parking. He said there was a legitimate concern about entering and exiting the driveway, but that the Board would be endorsing the idea that one could get three cars in and out of that driveway on a regular basis. He said there were a lot of negatives, like the slope of the driveway and the street, plus the passage that would add more traffic. He said if the applicant could do an expansion on the main house or an upward expansion, it would allow room to park in or create a turnout, but the property was burdened by being in the HDC and the Commission might not look favorably on that. He said it was admirable that the applicant improved the setback slightly, but they were still asking for a lot of relief. He said what would be more in keeping with the other two examples would be something much more ADU-like, which would reduce some of the burden of the total occupied square footage on the property. He said it was unfortunate that the property was subdivided in such a way that it negatively affected the property's potential development. He said the Board wanted to see the structure replaced by something better, but that he could not support what was proposed.

DECISION OF THE BOARD

*Mr. Lee moved to **deny** the variances for the petition, and Mr. Formella seconded.*

Mr. Lee said a lot of the criteria were not met, including the spirit of the ordinance and the hardship, which he felt were the most relevant. Mr. Formella said the petition would also be contrary to the public interest because there would be a threat to the public's health, safety, and welfare. He said the requested dimensional relief and the parking configuration created an unsafe situation. He said a hardship could be found when it came to asking for an additional dwelling unit, but he thought it failed on the hardship, given the extent of the dimensional relief asked for, and that it would not be an unnecessary hardship to scale back the proposal and the requested dimensional relief.

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

H) Petition of **553-559 Islington Street, LLC, Owner** for property located at **553 Islington Street** wherein relief was needed from the Zoning Ordinance to construct a rear addition in conjunction with reconfiguration of the existing six-unit apartment building which requires the following: 1) A Variance from Section 10.5A41.10A to a lot area per dwelling unit of 1,201 s.f. where 3,000 s.f. per dwelling is required; 2) A Variance from Section 10.5A41.10A to allow 19.5% open space where 25% is the minimum required; 3) A Variance from Section 10.5A41.10A to allow a ground story height of 10' 7.5" where 11' is required; 4) A Variance from Section 10.321 to allow a nonconforming building or structure to be enlarged, reconstructed or extended without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 157 Lot 3 and lies within the Character District 4-L2 (CD4-L2) District.

SPEAKING TO THE PETITION

Attorney Steven Hyde was present on behalf of the applicant, including project architect Tim Brochu and project engineer John Chagnon. Attorney Hyde reviewed the petition, noting that the

addition would permit the reconfiguration and the addition of a larger central staircase and a corridor to permit ingress and egress. He said the property was unique because it was surrounded by commercial and mixed-use structures. He reviewed the criteria and said they would be met.

Chairman Rheume said he didn't see any dimensions for the former outbuilding on the right-hand side of the property and asked if the applicant exceeded the five feet. Attorney Hyde said they were not within the setback. Chairman Rheume said the driveway was a common one that was once access to a shoe company, and he asked if it meant that the property line was on the opposite side of the driveway and not more than 20 feet. Attorney Hyde said it was a shared 13-ft wide passageway and that their property line was not even halfway across the driveway. Mr. Chagnon said the back of the proposed addition was six feet from the property line. He said the passageway was not part of the lot or the adjacent lot and that it was a dedicated piece of land that was still owned by the former shoe company.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mulligan said it was a substantial redevelopment of an existing nonconforming property and the required relief mimicked the existing nonconformities. He noted that there were already six grandfathered units on the property that would remain the same, but the applicant would do a full code-compliant renovation that would bring the property into the 21st Century. He said it wasn't much relief, given what already existed, so granting the variances would not be contrary to the public interest or the spirit of the ordinance. He said the character of the neighborhood wouldn't be materially affected and the public's health, safety, and welfare would not be implicated. He said the lot area per dwelling wasn't changing but was just getting reconfigured to improve the property and the public's welfare. He said substantial justice would be done because if the Board were to require the applicant to conform to the current zoning, it would likely mean that none of the improvements would take place and the property would be deficient, and the loss to the owner would outweigh any gain to the public. He said granting the variances would not diminish the values of surrounding properties because the most affected abutter was the gas station next door, which he didn't think would be affected one way or the other. He said the values of surrounding properties would be enhanced by bringing the property into substantial code compliance. He said that literal enforcement of the ordinance would result in an unnecessary hardship owing to the property's unique conditions, including abutting a gas station next door and railroad tracks to the rear, which distinguished the property from others in the area. He noted that it was already a pre-existing nonconforming property, which was an additional special condition. He said the property had existed for quite a while as a 6-unit apartment building, so

there was no fair and substantial relationship between the purpose of the provisions of the ordinance and their application to the property.

Mr. Parrott concurred and said the additional footprint represented by the addition, the stoop, and the deck were basically infills to the property, and the new walkway would make it look better. He said all the improvements would be a positive for the applicant and the neighborhood.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

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

Respectfully submitted,

Joann Breault
BOA Recording Secretary