

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

Remote Meeting Via Zoom Conference Call

Per NH RSA 91-A:2, III (b) the Chair has declared the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2021-01, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

7:00 P.M.

MARCH 16, 2021

MINUTES

MEMBERS PRESENT: Chairman David Rheame, Vice-Chairman Peter McDonell, Jim Lee, David MacDonald, Arthur Parrott, Alternate Phyllis Eldridge

MEMBERS EXCUSED: Christopher Mulligan, John Formella, Alternate Chase Hagaman

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meeting of February 16, 2021.

*The February 16, 2021 minutes were **approved** as presented.*

Chairman Rheame stated that Alternate Eldridge would sit in on all cases and that Petitions 668 Middle Street and 70 Sheffield Road were withdrawn by the applicants.

II. OLD BUSINESS

A) Petition of **Andrew & Katy DiPasquale, Owners**, for property located at **80 Fields Road** whereas relief was needed from the Zoning Ordinance to remove an existing shed and construct a new 12' x 16' shed which requires the following: 1) A Variance from Section 10.521 to allow a) a 3 foot rear yard where 9 feet is required; b) a 3 foot left side yard where 9 feet is required; and c) to allow 20.5% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 171 Lot 8 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

The applicants Andrew and Katy DiPasquale were present. Mr. DiPasquale said they wanted to replace the existing dilapidated garden shed with a new one. He reviewed the petition and the criteria and said they would be met.

Mr. MacDonald asked if explosives or other dangerous materials would be stored, and the applicant said no.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak. Chairman Rheume noted that two letters of approval were received from the applicant's neighbors. He closed the public hearing.

DECISION OF THE BOARD

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

Vice-Chair McDonell said it was a straightforward and simple request and that what currently existed would not be changed by slightly increased building coverage relief to build a slightly larger shed on the same spot. He said granting the variances would not be contrary to the public spirit and would observe the spirit of the ordinance. He said he saw no conflict with the purposes of the setbacks or building coverage and didn't see how it would alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because it would be a benefit to the applicant and no harm to the general public or other individuals. He said granting the variances would not diminish the values of surrounding properties, noting that the Board received letters in support of the project from some neighbors and that he could not imagine that replacing a dilapidated shed with a new one would diminish property values. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions. He said there was a fair amount of tree shielding that would alleviate any setback concerns. He said it was a small lot, and the location of the existing home prevented any reasonable alternative locations, except for moving the shed to the middle of the lot. He said the other special conditions were that the topography sloped down from the neighbor's yard, so there was a setback concern for the back neighbor, and they had an overlook of a completely flat area that could be potentially more of an issue. Due to those special conditions, Vice-Chair McDonell said he saw no relationship between the purposes of the provisions of the ordinance for the relief sought and their application to the property. He said the proposed use was reasonable and that the request should be approved.

Mr. Parrott concurred and had nothing to add.

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

B) **WITHDRAWN** Petition of the **Elizabeth Larson Trust of 2012, Owner**, for property located at **668 Middle Street (off Chevrolet Avenue)** whereas relief is needed from the Zoning Ordinance to subdivide one lot into two lots and construct 4, 2-family structures on proposed Lot 2 which requires the following: 1) A Variance from Section 10.513 to allow 5 free-standing dwellings on a lot where only one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 4,517 square feet where 7,500 square feet per dwelling unit is required. Said property is shown on Assessor Map 147 Lot 18 and lies within the General Residence A (GRA) District.

*The petition was **withdrawn** by the applicant.*

III. PUBLIC HEARING – NEW BUSINESS

Vice-Chair McDonell recused himself from the petition.

A) Petition of **Richard & Susan Shea, Owners**, for property located at **412 Colonial Drive** whereas relief was needed from the Zoning Ordinance to construct an attached 18' x 24' garage with new entry which requires the following: 1) A Variance from Section 10.521 to allow a) a 7 foot left side yard where 10 feet is required, and b) a 20 foot front yard where 30 feet 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 260 Lot 54 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

The applicant Richard Shea of 19 Howard Street and his father Richard Shea, Sr. were present to review the petition. Mr. Shea said he bought the home so that his father could live in it and that he wanted to add a garage and mud room. He reviewed the petition and the criteria, and he said the neighbors approved the project.

Chairman Rheume asked about the legal notice and the discrepancy. Mr. Shea said the City mistakenly stated that there would only be three feet to the left of the property line instead of three feet of relief. Mr. Stith agreed and said the Board could grant less relief than was advertised since the applicant was asking for less. Chairman Rheume asked how the front yard relief figure of 24 feet was reached. Mr. Shea said he wanted to bring the roof structure over the steps and had a dimension of five feet out, so the roof overhang encroached and made it 20 feet.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Judy Arnold of 403 Colonial Drive said many properties in the neighborhood were renovated over the years except for the applicant's. She said it was long overdue.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

Mr. MacDonald said the neighborhood wasn't crowded and that the house had enough property surrounding it to be appropriate for the neighborhood. He said the house needed an update and that it would be the right thing for the applicant and the neighborhood. Mr. Lee agreed.

*Mr. Lee moved to **grant** the variances for the petition as presented, and Ms. Eldridge seconded.*

Mr. Lee said the variance was not contrary to the public interest and the spirit of the ordinance was observed. He said it would not alter the essential character of the neighborhood or threaten the public's health, safety or welfare. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public. He said granting the variances would not diminish the values of surrounding properties because the addition would be an upgrade to the house and to the neighborhood. He said literal enforcement of the ordinance would result in an unnecessary hardship due to the special conditions of the property, and that there was no fair and substantial relationship between the provisions of the ordinance and their specific application to the property. He said the proposed use was reasonable and that the petition should be approved. Ms. Eldridge concurred and said it was a very tasteful addition to the house and to the neighborhood.

Chairman Rheume said the applicant had amply demonstrated that what was proposed was in keeping with the general character of the neighborhood. He said there were other properties that had garages and entryways added onto them over the years that were similar to what the applicant was requesting and in keeping with modern standards. He said all the lots were deep and uniform in size, and that a side and front setback of some sort would be run up against in making those kinds of improvements. He agreed that the application should be approved.

*The motion **passed** by unanimous vote, 5-0.*

Vice-Chair McDonell resumed his voting seat.

B) Petition of **The Prendergast Family Revocable Trust of 2012, Owner**, for property located at **70 Sheffield Road** whereas relief is needed from the Zoning Ordinance to construct an 8' x 22' farmers porch which requires the following: 1) A Variance from Section 10.521 to allow a) a 19 foot front yard where 30 feet is required and b) to allow 25% building coverage where 20% is the maximum allowed. 3) 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 233 Lot 46 and lies within the Single Residence B (SRB) District.

*The petition was **withdrawn** by the applicant.*

C) Petition of **Peter MacDonald, Owner** for property located at **58 Taft Road** whereas relief was needed from the Zoning Ordinance to construct a 12' x 16' rear addition with attached deck which requires the following: 1) A Variance from Section 10.521 to allow 24% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 251 Lot 12 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant and said the applicant wanted to add an addition and a deck to the rear of the building. He reviewed the petition and criteria and said the neighbors were in support and that two letters of approval were submitted.

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. MacDonald said he saw the house and met with the applicant. He said there was a lot of space in the front and the back of the property and there was a difficult slope that was unusable, so he thought it was an appropriate use of the property and made sense.

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

Vice-Chair McDonell said it was a small amount of building coverage and that the request would allow something to be built that fit into the neighborhood. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said he saw no conflict with the purposes of the ordinance, nor any alteration to the essential character of the neighborhood or threat to the public's health, safety, or welfare. He said the essential character of the neighborhood was sort of what the house was and would become, noting that several of the other homes in the neighborhood had additions. He said a house with one story was generally built upward to expand, but in the applicant's case, the house was built out into an area that didn't require any setback or dimensional relief, with the exception of the building coverage, so it was in keeping with the character of the neighborhood. He said substantial justice would be done because it was an unobtrusive addition that would cause no harm to the general public or other individuals. He said granting the variances would not diminish the values of surrounding properties because it would be in keeping with the neighborhood and would not have a negative effect on nearby property values. He said the special conditions of the property were that the lot was somewhat large for the area, but there was a large single-story home on it and the applicant needed additional living space. Aside from going upward, he said there was

nothing the applicant could do that would not require building coverage relief. He said the special conditions were what presently existed and the lot's size. He said there was no fair and substantial relationship between the purpose of the ordinance and its application to the property and that it was a reasonable request and should be approved.

Mr. Parrott concurred. He said he was familiar with the neighborhood and thought the logical addition would look like a part of the house and would fit into the neighborhood nicely.

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

D) Petition of **Joel & Jessica Harris, Owners**, for property located at **2 Monroe Street** whereas relief was needed from the Zoning Ordinance to demolish the existing garage and construct new 1 1/2 story garage which requires the following: 1) A Variance from Section 10.521 to allow 26.5% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Map 152 Lot 8 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The project designer Brendan McNamara was present on behalf of the applicant. He said the applicant wanted to demolish the existing garage and replace it with a 1-1/2 story garage that would include a play space and office space above it.

Vice-Chair McDonell asked the applicant to explain the use of the garage and attic space. Mr. McNamara said the intention was to create a play space for the children and an office space, noting that the kitchen renovation would reduce the living space in the house. Mr. Lee asked if the space above the garage was one big open space. Mr. McNamara agreed. He said the living space above the garage was slightly reduced due to the 4-ft deck area in the rear, and the garage itself was bigger than the living space. Chairman Rheume verified that there would be no kitchen in the garage living space.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak. Chairman Rheume noted that a letter of approval was received by the Board. He closed the public hearing.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variance for the petition as presented, and Vice-Chair McDonell seconded.*

Mr. Parrott said it was an unusual project with a lot of construction, but the variance request was small. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He noted that the spirit of the ordinance encouraged people to

upgrade and make their property more useful for them, and he thought the applicant had done that nicely. He said there would be no threat to the public's health, safety, or welfare or injury to any public rights. He said it would do substantial justice because the benefit to the applicant had been explained and made sense and there would be no harm to the general public or other individuals. He said granting the variance would not diminish the values of surrounding properties because they would be improved by the tasteful addition, and the existing peculiar-looking garage would look much better and be more logical. He said literal enforcement of the ordinance would result in an unnecessary hardship because the special conditions of the property were the way the house and garage were situated on the property that made enlarging them and getting additional space in any other fashion just about impossible. He said it was logical to build up to expand, seeing that the footprint was already there, and the property's functionality would be increased substantially, with no adverse effects. He said there was no fair and substantial relationship between the general purposes of the ordinance and its specific provisions. He said the project was more than reasonable and would increase the property's value and its usability for the owner and any future owners, and it would also increase the appearance of the property to the benefit of the neighbors. He said it should be approved.

Mr. McDonell concurred. He said he was initially concerned when he looked at the plans because the mass of the building looked like it might overpower things around it, but he said that wasn't really the case, noting that the house next door was a large New Englander with a garage on its side that the project was in keeping with, and there was also a large park across the street. He said the project was in keeping with everything in the neighborhood.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 8:32 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary