

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

7:00 P.M.

September 21, 2021

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Peter McDonell, Jim Lee, Christopher Mulligan, Arthur Parrott, David MacDonald, Beth Margeson

MEMBERS EXCUSED: Alternates Chase Hagaman and Phyllis Eldridge

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of August 17, 2021.

The August 17, 2021 minutes were **approved** as amended.

II. OLD BUSINESS

Mr. Mulligan was recused from the following petition.

A) **Live Free Real Estate, LLC - 0 Sagamore Avenue** request 1 year extension on building permit issued on September 24, 2019

Chairman Rheaume read the petition into the record. He said the second variance was denied on September 2019, so the applicant was requesting a one-year extension.

DECISION OF THE BOARD

*Ms. Margeson moved to **grant** the request as presented, and Mr. Parrott seconded.*

Ms. Margeson said it was within the ordinance's guidelines to grant a one-year extension and was a reasonable request. Mr. Parrott concurred and had nothing to add. Chairman Rheaume said he was always cautious about granting an additional one-year extension, even though the law now allowed two years instead of one for the applicant to get the building permit. He said the Board needed to be judicious about applying it, but he understood that the applicant was affected by the pandemic like many applicants before him, so it was appropriate to allow the extension.

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

*It was moved, seconded, and passed unanimously to take Items D, 125 Elwyn Avenue, and H, 449 Court Street, out of order so that they could be **postponed**. (See Items D and H).*

Mr. Mulligan was recused from the following petition.

B) Petition of **Wentworth Corner LLC, Owners**, for the property located at **960 Sagamore Avenue** whereas relief is needed from the Zoning Ordinance to demolish existing structures and construct a 6 unit residential building which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,360 square feet where 7,500 square feet is required. 2) A Variance from Section 10.1114.31 to allow two driveways on a lot where one driveway is permitted. Said property is shown on Assessor Map 201 Lot 2 and lies within the Mixed Residential Business (MRB) District.

SPEAKING TO THE PETITION

Attorney F. X. Bruton was present on behalf of the applicant. He said the applicant convened with the abutters and decided to build six units instead of eight and that a letter of support signed by all the abutters was submitted to the Board. He reviewed the petition, noting that the parcel was unique because it was a corner lot burdened with a 100-ft buffer zone, and Sagamore Grove was a city right-of-way that would create driveways on two frontages.

Mr. MacDonald noted that there was an affordable housing shortage in the city and asked what the applicant's intentions were in terms of affordability. Attorney Bruton said the zoning ordinance was focused on larger projects with respect to affordable housing, and the applicant's project was small in comparison because it was only six condo units and different from the affordable rental perspective. Ms. Margeson asked if the reason the applicant was meeting all the setback requirements was due to the inclusion of the public right-of-way. Attorney Bruton agreed and said they were also burdened with the 100-ft buffer. He said the existing building wasn't oriented parallel to Sagamore Road, so they were trying to do that. Ms. Margeson said the underground parking request exceeded the city's parking requirements and asked why the parking in the back was needed. Attorney Bruton said it was for guest parking and that they were trying to reduce it from the original 25 parking spaces to 19 spaces. He said there was no room for guest parking in the underground parking.

Chairman Rheame opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

William Pingree of 11 Sagamore Grove said that he and a few abutters were originally against the proposal but now favored it because of the changes made. He said the traffic would be greatly reduced as opposed to when the building was a restaurant and that the two proposed driveways would be much less than the two existing ones. Relating to the affordability issue, he said Sagamore Grove residents lived in expensive houses and paid high taxes, so they were more in favor of the applicant's development, especially since it had fewer units than originally.

Chairman Rheaume confirmed that the Board received a recent letter from a number of the abutters stating that they were in favor of the proposal.

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

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

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variances as presented, and Mr. Lee seconded.*

Mr. Parrott said the neighborhood was odd because part of it was waterfront and part of it was commercial, and there was a medical facility across the street, housing down a dead-end street, and wetlands in the back corner. He said the existing buildings were tired and that the proposed development was a very appropriate re-use. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the use would not conflict with any implicit or explicit ordinances and would not alter the essential character of the neighborhood. He said it was an allowed use in the zone and would not threaten the public's health, safety or welfare or injure any public rights. He said substantial justice would be done because it was clear that the balancing tip should go to the applicant. He said granting the variances would not diminish the values of surrounding properties, particularly with the change in the number of units and the attractive design of the complex. He said changes to property values, if any, would be of a positive nature. He said literal enforcement of the ordinance would result in an unnecessary hardship, noting that he didn't see any connection between the general public purposes of the ordinance and their specific application of putting up a multi-unit project on that property, especially a well-designed one that would fit the site nicely. He said the proposed project was reasonable because the zone was already partially a residential one and the use would fit in nicely with the nearby existing uses. He said the petition should be approved. Mr. Lee concurred with Mr. Parrott and said the values of surrounding homes would be greatly enhanced by the project.

Ms. Margeson said she would support the motion, noting that the property clearly had special conditions due to the public right-of-way and the wetland buffer. She said even though the driveway gave her pause because it was clear to her that there were enough public parking spaces underneath the building, the Technical Advisory Committee (TAC) would evaluate it and as well as the proposed two driveways. Chairman Rheaume explained why he thought the applicant needed the back lot for visitor parking and said he would support the motion.

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

III. PUBLIC HEARINGS – NEW BUSINESS

Mr. Mulligan resumed his voting seat.

A. Request of Shirley W. Scarponi Trust (owner), and Shirley W. Scarponi, (Trustee), for the property located at 276 Melbourne Street whereas relief is needed from the Zoning

Ordinance to construct a Detached Accessory Dwelling Unit (DADU) which requires the following: 1) Variances from Section 10.521 to allow a) a lot area of 10,867 sq. ft. where 15,000 sq. ft. is required; b) 34.5% building coverage where 20% is the maximum allowed; and c) a 15 foot rear yard where 30 feet is required. Said property is shown on Assessor Map 233 Lot 84 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Attorney Monica Kieser was present on behalf of the applicant. The owner Shirley Scarponi and project consultant Mike Garrepy were also present. Attorney Kieser reviewed the petition. She noted that the bizarre shape of the lot and the building envelope made it so that nothing could be attached to the right, front or rear of the house, and that attaching anything to the left of it would put it closer to the wetland. She said the DADU would be a residential use, with adequate space between the abutter and the undeveloped wooded area and wetland. She reviewed the criteria. Mr. Garrepy explained that the lot was encumbered by two rear setback lines and, with respect to the north property lines, landscaping could further buffer the DADU from the neighbor.

Vice-Chair McDonell asked why the owner couldn't expand the building upward. Mr. Garrepy said most of the structure was vaulted ceiling and that a second story would defeat the owner's wish to remain in a single-story building. Vice-Chair McDonell asked where the 25 percent building coverage figure came from, noting that the prior 2015 approval granted 22.2 percent building coverage. Mr. Garrepy said he thought it was more of an interpretation than a change, and that different surveying companies may have treated something on site as additional coverage. Mr. Stith said if a tax map was used instead of a survey, there would be some margin for error. Mr. Mulligan said the siting of the proposed structure was in an area that had the most effect on the nearest abutter and asked why it couldn't be pushed back closer to the property's southern boundary where it abutted the condo property. Attorney Kieser said there would be a greater impact on the wetland buffer.

Ms. Margeson said the adjoining properties in the single SRB zone were all considerably smaller than the applicant's lot. Attorney Kieser said there were originally two lots and thought that was the reason why the small house was built where it was, which made it impossible to attach an ADU to the house. She said the lot's shape and the buffer constrained the project, and she noted that the applicant's house was long and narrow and only had one floor as opposed to the neighbors who had smaller lots but multi-floor houses. Ms. Margeson pointed out that the property was much larger than surrounding ones except for the two abutters' properties.

Chairman Rheame said the original intent of the ordinance was for ADUs to be mostly invisible to folks going by. He said one of the ordinance's provisions allowed applicants to use a garden cottage option because a lot of properties in town had carriage houses or the proposed structure might be in an area with a cottage-type possibility. He said he was concerned because the proposed DADU would really look like a second house, and he didn't see how it would fit in with the general character of the neighborhood. Attorney Kieser said it was a situation where there was a number of smaller lots that had only one structure but there were others that had more than one structure, including Melbourne and Islington Streets. She said the owner needed single-floor living, otherwise they could have a garage with an apartment above it. She said the

DADU would look like a garden cottage and the requested relief was focused more on the lot area and the setbacks, and that they were proposing a DADU that would be architecturally consistent with the existing home. She said everyone was happy and asked why that should be interfered with. Chairman Rheume said it wasn't a popularity contest but was what the ordinance supported in terms of exceptions being granted. He asked what was driving the additional request for building coverage. Mr. Garrepy said the square footage included the porch area and the primary objective was to provide single-level living, which required the margin footprint. Chairman Rheume said the porch wasn't part of the 877 square feet because it was all the interior living. He asked if the applicant considered using the garage for the ADU, with a smaller expansion onto it. Mr. Garrepy said the applicant didn't want to do that because they wanted covered parking. Chairman Rheume said the Board wanted to continue giving the appearance of a single residence neighborhood. Mr. Parrott said he couldn't pick out the paved driveway on the drawing, and Attorney Kieser explained it.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Paul Mannle of 1490 Islington Street said he was a direct abutter and thought the house would look like a little house on a little lot, similar to a lot of nearby properties. He noted that the property at the corner of Melbourne Street and Essex Avenue had a larger lot and that the wetlands were also problematic. He said the DADU would look like it had always been there.

Cathy Youngs of 206 Melbourne Street said she commended the applicant for trying to stay where they were and thought it was a great project.

SPEAKING IN OPPOSITION TO THE PETITION

Chairman Rheume said the Board received a letter in opposition.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Mulligan said the property had special conditions, including the ell-shaped lot, and that the proposed DADU would be oriented in a different direction than the main dwelling, so someone driving through the neighborhood would see modest houses on small lots, and the DADU wouldn't jump out as being out of character. He thought it was a decent case of a hardship because there were special conditions that distinguished the property from others and the applicant was siting the DADU so that it would have the least possible impact to the wetland. However, he said he was struggling with the proposed size of the DADU, which affected the requested relief for building coverage. He said if the Board granted that relief, the applicant could build up to 34.5 percent where 20 percent was allowed, but the applicant's design choice affected that. He said the 750 square feet was actually the gross floor area, which the ordinance

defined as measured from other exterior walls, so even though it was 880 square feet of living space, it was probably 900 or more gross floor area, which was bigger than contemplated for a DADU. He said the hardship was inherent in the property but he wasn't sure that it drove the size of the DADU. Ms. Margeson agreed. She said the building coverage for the project was problematic but also thought it was well below the 15,000 that the zoning ordinance requested and was in an area where there weren't a lot of SRB lots except for the two abutters on the sides.

Vice-Chair McDonell said the way the structure would fit into the neighborhood was an important piece. He said the existing house was unusual for the neighborhood and thought it was reasonable to request an expansion. He said the applicant made good points on why nothing could be done to the existing home. He said the request seemed reasonable and agreed with the abutter who said it wouldn't look out of place in the neighborhood, but he thought the driveway would look large and out of place. He said it would be on a corner lot and probably wouldn't really catch anyone's eye but its size may be a problem. Chairman Rheume pointed out that the relief would be granted in perpetuity and there might be subsequent owners. He said he understood that the relief was needed due to the size of the lot, but he would need to have it proposed as the bare maximum, something like 750 square feet. He said the owner could figure out another way of accommodating visiting family.

The applicant requested that the petition be continued.

DECISION OF THE BOARD

*Mr. Mulligan moved to **continue** the petition to the October meeting so that the applicant could return with a revised design. Mr. Parrott seconded.*

Mr. Mulligan said he would incorporate his previous comments. Mr. Parrott concurred and said it was the best approach for all parties.

Mr. MacDonald said he felt a duty to help the applicant arrive at an acceptable outcome. Chairman Rheume said it was incumbent on the applicant to make a successful pitch to the Board. Mr. Mulligan agreed. Mr. Parrott said he had the same concern for the structure's size and the pavement, noting that he didn't see any building dimensions on the plan. He said 34.5 percent was a huge ask and that he looked forward to a redesign.

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

B. Request of Michael J. and Wendy L. Joanis, (Owners), for the property located at 126 Elwyn Avenue whereas relief is needed from the Zoning Ordinance to construct a 15' x 22' single car garage which requires the following: 1) Variances from Section 10.521 to allow a) a 4' secondary front yard where 15' is required; b) a 3' left side yard where 10' is required; and c) 31.5% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.571 to allow an accessory structure to be located in any required front yard and closer to the street than the principal building. Said property is shown on Assessor Map 112 Lot 44 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicant Mike Joanis was present and said the previous approval to demolish the garage had expired when he purchased the home. He reviewed the petition and said the neighbors had no concerns. He said the garage would match the house architecturally and would remain in the same location as the demolished one and that there were several detached garages nearby.

Mr. MacDonald asked if access to the garage would only be via Sherburne Avenue. Mr. Joanis agreed. In response to Mr. Mulligan's question, Mr. Joanis said the garage was demolished between September of 2015 and December of 2016.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mulligan noted that approvals were granted but never acted on before and that an argument could be made that once the nonconforming structure was demolished and the grandfathered status evaporated, the applicant could be forced to comply with the ordinance, but he thought it was a cramped way of looking at it. He said the lot was long and narrow and there was no way to comply with the side yard setbacks. He said it made no sense to make the secondary front yard setback complied with, given that it would absorb a useful backyard that the applicant could take advantage of. He said the relief granted in 2015 was properly granted, and the consideration that there was a pre-existing nonconforming garage on that site was no longer there. He said much of the same justifications cut in favor of granting the application. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance, the essential character of the neighborhood was residential and would not change, and the public's health, welfare, and safety would not be harmed in any way. He said the most extreme setback relief had to do with Shelburne Avenue, but the applicant made a good point when he said sliding it over to that side made sense, given that the abutter to the north had an accessory structure on the lot line. He said the garage was modest, which favored the spirit and intent of the ordinance. He said substantial justice would be done and that the project would not diminish surrounding property values in the neighborhood because a newly-constructed garage that affords use and utility to the applicant wouldn't do anything but enhance surrounding properties. He said special conditions of the property were that the lot was long and narrow, with frontage on both Melbourne Street and Sherburne Avenue, and there was a building envelope that couldn't actually be built. He said there was no fair and substantial relationship between the purpose of the dimensional requirements and their application to the property. He said it was a reasonable use, a residential use in a residential zone, and met all the criteria and should be approved.

Vice-Chair McDonell concurred and had nothing to add.

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

Mr. Mulligan was recused from the following petition.

C. Request of Todd E. Hedges Revocable Trust, (Owner) and Todd E. Hedges, (Trustee), for the property located at **139 Cass Street** whereas relief is needed to construct a two-car garage with apartment above which requires the following: 1) A request for an Equitable Waiver pursuant to RSA 674:33-a or a Variance from Section 10.521 to allow a 9' rear yard where 20' is required. Said property is shown on Assessor Map 146 Lot 6 and lies within the General Residence C (GRC) District.

SPEAKING TO THE PETITION

Attorney Monica Kieser was present on behalf of the applicant. She said the previous request for a DADU ten feet from the rear property line was granted by the Board, but a calculation mistake was discovered, so they were requesting an equitable waiver. She said the as-built survey found that the DADU was seven inches closer than it should have been. She said the error was inadvertent and not made in bad faith. She reviewed the original petition and the criteria.

Vice-Chair McDonell said the equitable waiver criteria noted that a violation wasn't noticed until after a structure in violation had been substantially completed, so he concluded that the garage wasn't substantially completed and asked if it could be argued that the structure in violation was the foundation. Attorney Kieser said they were unable to proceed once the as-built was submitted and the problem was discovered, so the structure was the foundation. She said it would be a significant hardship to redo it.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

The Board discussed what a structure was and what constituted substantial completion.

*Vice-Chair McDonell moved to **grant** the request for an equitable waiver, and Mr. Lee seconded.*

Vice-Chair McDonell reviewed the equitable waiver criteria. Relating to whether the violation was not noticed until after a structure in violation had been substantially completed, he said the Board discussed what a structure was and what constituted substantial completion. He felt that the drafter of the Statute would have considered the structure in this case to be the garage but probably wouldn't have thought about the error not being found before the garage itself was

completed. He believed that the violation wasn't noticed until after the foundation was substantially completed, so the first criteria was met. He said the second criteria stated that the violation wasn't caused by ignorance of the law or bad faith, and he thought it seemed that what the architect did in measuring was reasonable and was a good faith error in calculation. Relating to Criteria 3, he thought the applicant met the criteria that the dimensional violation does not constitute a nuisance, doesn't diminish the values of properties in the area, and doesn't interfere with permissible uses of any property in the area. As for Criteria 4, due to the degree of the investment made so far and the cost of fixing it would outweigh any public gain, Vice-Chair McDonell said it would be inequitable to require the violation to be corrected because it would far outweigh any public benefit by moving it over just a few inches. For those reasons, he said the equitable waiver should be granted. Mr. Lee concurred and said the applicant clearly met the burden of proof for an equitable waiver.

The motion passed by unanimous vote, 6-0.

D. REQUEST TO POSTPONE. Request of **Ashley Dickenson** and **Elyse Hambacher, (Owners)**, for the property located at **125 Elwyn Avenue** whereas relief is needed to demolish existing garage and rear addition on main structure and construct a new garage with dwelling unit above and reconstruct rear addition on main structure including two shed dormers which requires the following: 1) Variances from Section 10.521 to allow a) lot area per dwelling of 2,559 square feet where 7,500 is required; b) a 1' secondary front yard where 15' is required; c) a 5' left side yard where 10' is required; d) a 2' right side yard where 10' is required; and e) 39% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.513 to allow more than one free-standing dwellings on a lot. 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 112 Lot 47 and lies within the General Residence A (GRA) District.

Chairman Rheume read the petition into the record. He said the applicant needed to postpone due to necessary drawing revisions.

DECISION OF THE BOARD

Mr. Mulligan moved to grant the extension as requested, and Mr. Parrott seconded.

Mr. Mulligan said the Board typically looked favorably on a first request for extension, and he thought it was reasonable to give the homeowner another month to revise his submittal. Mr. Parrott concurred and said the reason was logical and he was glad to support it.

The motion passed by unanimous vote, 7-0.

E. Request of **Jeffrey L.** and **Dolores P. Ives, (Owners)**, for the property located at **44 Gardner Street** whereas relief is needed to construct a 6' x 12' mudroom addition with new landing and steps which requires the following: 1) A Variance from Section 10.521 to allow

34% building coverage where 30% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 103 Lot 42 and lies within the General Residence B (GRB) District.

SPEAKING TO THE PETITION

Architect Anne Whitney was present on behalf of the applicant. She said approval was received in April 2020 for 34 percent building coverage, but the applicant waited a year to do the renovations due to the pandemic. She reviewed the petition, noting that a mudroom would allow a more direct access into the house from the driveway, and the shed on the back corner of the property would be removed. She said the current building coverage was 32.7 percent and the adjustment would make it 33.7 percent, so they were staying within the April approval but just exchanging some square footage on the property. She reviewed the criteria.

Ms. Margeson asked what the addition in April 2020 was for. Ms. Whitney said they turned the porch into living space but had to add a landing and steps, and the kitchen bay was made a bit wider. She said none of it was built and that they planned to start the project in a few months. Ms. Margeson said the lot was the second largest one on Gardner Street. Ms. Whitney agreed but said it was less than the 7500 square feet that the zoning required.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Mulligan said the applicant was seeking a modification of an existing nonconforming building where they already received approvals in the recent past to get to the lot coverage they were currently seeking relief for, and to do that, they were removing a shed that encroached on the rear yard setback, so swapping out a shed for a mudroom was reasonable to improve the property and maintain the previously-approved lot coverage. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the essential character of the neighborhood would not be altered and the public's health, safety and welfare would not be negatively impacted. He said substantial justice would be done because the loss to the applicant if the petition were denied would far outweigh any gain to the public. He noted that the applicant already got the relief in the past and was just reconfiguring the structure to meet that relief. He said granting the variances would not diminish the values of surrounding properties but would increase them because the shed would be removed and the amount of construction would improve the applicant's property value and surrounding ones. He said the

property's special conditions were the preexisting nonconforming structures on the property, and that the relief to obtain additional lot coverage was previously granted and what was proposed didn't go beyond that. He said there was no fair and substantial relationship between the purpose of the lot coverage requirement and its application to the property, noting that the Board already found that the applicant could exceed it and not cause any harm to the general public. He said it met the unnecessary hardship test and was a reasonable residential use in a residential zone and should be approved. Mr. Parrott concurred. He said it was a modest request and tastefully done and was almost be in the center of the small lot.

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

Mr. MacDonald was recused from the following petition.

F. Request of Potter Schwartz Revocable Trust of 2013 (Owner), and Michael F. Schwartz, (Applicant), for the property located at 21 Fernald Court whereas relief is needed to construct a 16' x 23' deck and add an 8'x8' shed which requires the following. 1) Variances from Section 10.521 to allow a) 29% building coverage where 20% is the maximum allowed; and b) a 13' 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 207 Lot 55 and lies within the Single Residence B (SRB) and Historic Districts

SPEAKING TO THE PETITION

The applicant Mike Schwartz was present and said his architect Justin Knowlton was available via phone. He reviewed the petition and said he wanted to add a deck to the left side of the house and a small shed to the right of the house. He said the lot was a small trapezoidal one and the shed would be ideal to store lawn equipment. He said they wanted a deck instead of having steps down to the patio. He reviewed the criteria and said they would be met.

Ms. Margeson asked if it was a teardown. Mr. Schwartz said originally they only planned to remove the roof but discovered that they had to remove more. He said one of the foundations couldn't be used. Chairman Rheume said the shed was fine but the deck was a problem. He noted that relief was given to the applicant earlier in the year for construction of other aspects of the new property, yet the applicant was back and asking for more relief. He asked why a patio that wouldn't require any relief wasn't acceptable. Mr. Schwartz said it was a combination of being able to walk out from the living area onto the deck instead of descending 3-4 steps and carrying things back and forth. Mr. Knowlton said elevating the deck would tie it into the front porch, would give the applicant privacy from some of the neighbors as well as a better river view, and would prevent a hazard by not having to descent several steps to the patio carrying a plate of food and so on.

Ms. Margeson said there were already some evergreen shrubs and the neighbor's garage at the back of the lot, and she asked why additional screening was needed or what privacy would be

gained by elevating the deck. Mr. Knowlton said most of the shrubs were low plantings and a few of the patio spaces on both properties were quite visible from the proposed deck.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one rose to speak.

SPEAKING IN OPPOSITION TO THE PETITION

Anne Moodey of 180 New Castle Avenue said the shrubs were hydrangeas and there was also a Japanese maple tree. She said she wasn't necessarily in opposition but was concerned about the elevation of the deck because the applicant's back yard was raised about four feet above her yard and the deck would add 5-6 feet more, which would be a privacy issue for her. She said it would be better if the deck were lowered and the applicant only had to step down 2-3 steps.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Knowlton said they were only proposing that the deck be 30 inches off the ground, which would make it quite low. He said by code, a deck could go up to 18 inches without being referred to as a deck, and they were just asking it to be built 12 inches higher.

Chairman Rheume said he didn't know if the fact that the deck would be 30 inches off the ground was mentioned in the plan and that the land looked like it was constant along the whole length of the deck. Mr. Knowlton said they had to do a lot of regrading. Mr. Schwartz said the whole area was previously blacktop and would now be grass, which would benefit the neighbor.

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

DISCUSSION OF THE BOARD

Ms. Margeson said she would not support the request because it failed in substantial justice and she didn't think it was necessary for the house itself. She said she was also concerned about the increase in building coverage that would go from 24 to 29 square feet and was supposed to be 20 square feet. She said she objected to the deck but thought the shed would probably be okay. Mr. Parrott said the neighborhood was pretty congested and featured some odd-shaped lots. He said the applicant's house appeared to be very large and looked like it would be a handsome structure, but he was concerned about the size of the proposed deck and its positioning toward the neighbor's property in terms of elevation. He said it was a legitimate concern because the houses were close to each other and the terrain wasn't level, and he thought the 16x23' deck was sizeable for the application and location. Mr. Lee agreed and said the abutter's comments were spot on and that he would not support the project.

Chairman Rheaume said he was fine with the shed and that it would only need one percent additional relief. He said the deck would have about a 12-inch differential, and with two steps, it would be fully compliant and would be 18 inches or less in height. He said two steps wasn't an enormous imposition on the applicant and that five steps was a lot. He suggested giving one percent relief for the shed, which would eliminate the front yard requirement. He said the applicant could do something that didn't affect the neighbor and adhered to the ordinance.

The applicant asked to table the petition to a future meeting.

DECISION OF THE BOARD

*Ms. Margeson moved to **table** the petition, and Mr. Lee seconded it.*

Vice-Chair McDonell said the Board seemed to feel that the shed was fine and the deck was fine but too high, and if the deck were lowered, it would be fully compliant. He asked what the harm was in denying the variances for the deck and granting the building coverage, bumped by one percent, to allow the shed instead of tabling the petition. Chairman Rheaume said he was not in favor of a motion to table because he didn't want to make it a routine anytime an applicant ran into trouble. It was further discussed.

*The motion **failed** by a vote of 5-2, with only Mr. Lee and Ms. Margeson voting in favor.*

*Mr. Mulligan moved to **grant** Variance A with the **stipulation** that there be a maximum of 25 percent building coverage, and to **deny** Variance B. Mr. Parrott seconded.*

Mr. Mulligan said granting Variance A would not be contrary to the public interest or the spirit of the ordinance and that the essential residential character of the neighborhood would not be impacted by a one percent bump-up in lot coverage to accommodate the shed. He said substantial justice would be done because the loss to the applicant if the lot coverage for the shed were denied would outweigh any gain to the public. He said granting Variance A would not diminish the values of surrounding properties because the addition of a modest shed would not have a negative effect on them. He said the special conditions were the oddly-shaped lot with a large house structure on it that generated quite a bit of lot coverage, which were special conditions that distinguished the property from others, so there was no fair and substantial relationship between the purpose of the lot coverage ordinance, at least for the purposes of a modest increase in lot coverage to accommodate the proposed shed, and its application to the property. He said it was a reasonable use, a residential use in a residential zone, and should be approved with the stipulation.

Mr. Mulligan said Variance B for the front yard setback was denied because the relief requested was driven by the proposed deck, which was a structure higher than 18 inches off the ground, and the spirit and intent of the ordinance was not promoted by that relief. He said the project architect acknowledged that the purpose of elevating the deck was to obtain privacy for the applicant, but Mr. Mulligan said the deck would hinder the neighbor's privacy, so the spirit and

intent of the ordinance was not met by granting that relief to accommodate a deck elevated high enough so that it triggered lot cover and setback relief. He said the loss to the applicant if the Board denied that relief was counterbalanced by the gain to the public, who had an interest in not seeing the structure extend that deeply into the lot coverage. He said it would impact the privacy of surrounding properties as well. He said the request didn't meet all the criteria necessary to grant the front setback relief, but it was all driven by the fact that the elevated deck would become part of the structure, and that a patio or a lower deck lower wouldn't require that relief. Mr. Parrott concurred and had nothing to add. Mr. Lee said the applicant could still build a deck but that it had to be 18 inches or lower.

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

*It was moved, seconded, and passed to **suspend** the 10:00 rule and continue the meeting.*

Mr. MacDonald resumed his voting seat.

G. Request of Brian S. Porter and Erica J. Wygonik (Owners), for property located at 319 Lincoln Avenue whereas relief is needed to demolish existing garage and construct one-car attached garage and construct new dormer which requires the following: 1) Variances from Section 10.521 to allow a) a 2.5' left side yard where 10' is required; b) a 4' right side yard where 10' 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 building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 130 Lot 31 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

The applicant Brian Porter was present to review the petition. He explained that the current garage was built into a retaining wall, which caused a lot of moisture and made the garage non-functional, and he also wanted more open space on his lot. He said the attic also had a nonconforming bathroom that should be replaced, so they were proposing a dormer. He said all the neighbors were in support. He said the 2-car garage would be demolished and converted to a smaller one-car garage and attached to the house by a mudroom. He reviewed the criteria. Ms. Wygonik phoned in and said she agreed with everything her husband said and that they had worked hard with the neighbors to come up with a plan that solved all the concerns.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **grant** the variances for the petition as requested, and Ms. Margeson seconded.*

Vice-Chair McDonell said it was a well thought-out application and did a lot to reduce the nonconformity while getting a lot of additional usable space for the applicant at not much of a cost to anyone else. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, and 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 general public or neighbors, noting that the neighbors supported the project. He said the left setback would be increased slightly but that the neighbor was supportive, and he didn't feel that it would be a substantial encroachment that would cause any harm to that individual. He said granting the variances would not diminish the values of surrounding properties because the renovation and addition were tasteful. He said literal enforcement of the ordinance would result in unnecessary hardship due to the size and shape of the lot and the shape of the structure on the lot as it existed today. He said those were special conditions that distinguished the property from others in the area and there was no fair and substantial relationship between the purposes of the ordinance and their application to the property. He said the proposed use was a reasonable one and should be approved. Ms. Margeson concurred and said the open space coverage also increased considerably over what was required. She said it was a well thought-out application and improved light and air, which was a major tenet of the ordinance.

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

Ms. Margeson was recused from the following petition.

H. REQUEST TO POSTPONE. Request of **Mary H. and Ronald R. Pressman, (Owners)**, for property located at **449 Court Street** whereas relief is needed to construct a 4th story dormered addition with a height of 41.5' which requires the following: 1) Variance from Section 10.5A43.31 to allow a fourth story addition with at a height of 41.5 feet where 2 stories (short 3rd) and 35 feet is the maximum allowed. 2) A Variance from Section 10.5A41.10A to allow a 6" left side yard where 5 feet is required. 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 105 Lot 6 and lies within the Historic District and Character District 4-L1 (CD4-L1).

Chairman Rheume said the applicant wanted to postpone the petition to the October meeting so that he could incorporate comments from an abutter.

DECISION OF THE BOARD

*Mr. Mulligan moved to **postpone** the petition to the October meeting, and Mr. MacDonald seconded.*

Mr. Mulligan noted that there were some late-breaking comments from one of the abutters that affected what may come before the Board for relief. He said the Board typically granted the first request for postponement. Mr. MacDonald said it was a controversial topic and that the petition needed all the time it could get to find its way to a solution that was acceptable to the neighbors.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 10:50 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary