

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

CONFERENCE ROOM A

7:00 p.m.

July 27, 2010

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Derek Durbin, Alternate: Robin Rousseau

ALSO PRESENT: Principal Planner, Lee Jay Feldman

I. APPROVAL OF MINUTES

A) Board of Adjustment Meeting April 27, 2010

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented.

II. PUBLIC HEARINGS

6) Case # 7-6

Petitioners: David L. Meyers and Anne M. Meyers

Property: 180 Gates Street Assessor Plan 103, Lot 18

Zoning district: General Residence B

Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure

Variance from Section 10.521, Table of Dimensional Standards, to allow the addition of a boxed bay window with a 3' side yard setback where 10' is required

SPEAKING IN FAVOR OF THE PETITION

Mr. David Meyers introduced himself and stated he was the owner of property on 180 Gates Street and was applying for a variance to add a boxed bay window the kitchen in my house. His house is built on the lot line, so a variance was needed in order to add any structure other than what is currently there, in this case it is three feet from the lot line and from the side of the house. He is doing a kitchen renovation. He was aware that there were 5 criteria and wasn't sure how to go over them. Chairman LeBlanc advised that if he wanted the variance, Mr. Meyers has to convince the Board that he has met all of the criteria. Mr. Meyers indicated he would try to do

that. Regarding Criteria 1, the Board has a picture in the packet that shows where this window would go. Of all his abutters, only two would even be able to see this window from one window of their second floor. He felt that neither abutter would have any real interest in looking into his kitchen. There would be no detriment to the public interest and light and air would not be affected. The spirit of the Ordinance, as he understands it, is to permit the reasonable use of private property that does not affect the rights of others or the public welfare. He stated that the house next door to me is a two-family rental property. When the house was purchased, there was an 8-foot fence on the property line. This bump-out window would be below the fence, so the abutter couldn't even see it. Only the neighbor in back could see it but it doesn't affect their view. He is well within all of the law requirements for lot coverage and open space.

Mr. Meyers stated that substantial justice will be done. His kitchen currently has an effective walking area of 36" X 5.5' and, with this renovation, he can get the area to about 4' X 7'. The designers he has talked with indicated that if he is going to get any more light or air into the kitchen he would have to do something with the window. He just wants to bump out the window that exists and increase it by about 60% more than what exists now. It has no adverse affect on the public and it is clearly important for him to have that as far as kitchen renovation. The values of the surrounding properties will not be diminished and he felt that any time one does a tasteful renovation it does nothing to adversely affect the property values of your neighbors or neighborhood. It can only increase the value of my property and by extension, increase the value of theirs as well. The literal enforcement of the provisions would result in unnecessary hardship. His entire kitchen is within the 10-foot setback and he has no other alternatives as to what he can do and how he can do it. He can't move the kitchen from one side to the other. His only alternative is to rip out what is there to make the best use of the space as it exists. To add the 3.5' - or 4.5' space that he is requesting is very valuable to him and has zero adverse affect on any of the abutters or anybody else in the neighborhood.

Chairman LeBlanc asked, regarding the size of the window that is currently there and that is going to be replaced, what is the size of that and what is the size of the new window? Mr. Meyers indicated the new window is 4'3" X 3'7" and size of the existing window is 3'2" X 3'.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Ms. Eaton moved to approve as presented and advertised. Mr. Grasso seconded.

Ms. Eaton stated the petitioner is asking for a minor encroachment into a setback of only 13 inches into his side yard where his house is right on the property line. She thought this was a reasonable request considering the position of the home and its position on the lot. Addressing the criteria, she thought the petitioner has done an excellent job of catching the issues in his submittal and she agreed that the variance will not be contrary to the public interest. She thought this was a minor change to the home. The house is right on a property line, there isn't much else you could do without requiring a variance and there already is a large fence separating the two

buildings. The spirit of the Ordinance will be observed. The Ordinance is designed to maintain air and space between properties and she thought the house is already much closer to the other home as it is now and this will not impede or change the nature that in this area. Substantial justice will be done. She thought the owner can have a better use of his property with no harm to the public interest. She felt that the value of the surrounding properties will not be diminished; it's a minor change to the home and an upgrade for the window. Literal enforcement of the provisions would result in an unnecessary hardship. This is a 250-year old house that is sitting on the property line and where the home is situated, pretty much any change is going to require a variance.

Mr. Grasso agreed with Ms. Eaton's comments on this variance to approve. The window needs replacing. It is a very minor request. Almost anything the owner does to this property is going to have to come before the Board. He thought this was nicely thought out and he supports the motion.

The motion to grant the petition as presented and advertised was passed unanimously.

7) Case # 7-7

Petitioner: Piscataqua Savings Bank

Property: 15 Pleasant Street Assessor Plan 107, Lot 32

Chairman LeBlanc advised this case has been withdrawn.

8) Case # 7-8

Petitioner: Christ Church Parish

Property: 1035 Lafayette Road Assessor Plan 246, Lot 1

Zoning district: Single Residence B

Request: Variance from Section 10.1241 to allow two freestanding signs in a district where freestanding signs are not allowed

SPEAKING IN FAVOR OF THE PETITION

Mr. James Hines introduced himself and advised he was there with Rev. Dan Vinera of Christ Church. They were present to request to replace a pre-existing, yet nonconforming sign. They are seeking a variance as their church is in a residential zone where there are no signs allowed. He called attention to the initial sign permit application. There are currently five existing signs and they are going down to two with permission. One of the existing signs is parallel to the road and not adjacent. It is designed more for the business they run out of the church, Little Blessings Daycare, for signs and notices for that business. On the existing plot plan, it shows the position of the five signs and their dimensions. On the next page is the plan which shows the one new sign and its relationship to the property line. The next page you will see the sign they are requesting and its dimensions. The next two pages are the state plot plan. Mr. Hines had met a representative from the State of New Hampshire at the church and his only concern is the

drainage easement that can be seen slightly to the southwest of where the proposed sign is. The next page is the “falling pole sign.” Mr. Hines stated he would have propped it up and moved it around but it was too heavy and rotted. The next two signs are to be removed. The next page shows the pre-existing, nonconforming sign down by the main entrance. One can see where the first sign was hanging up on the mast, above the Little Blessings sign. Both of those will be removed and replaced with one sign. The next sign is the existing, parallel sign shown situated at the church. This is the sign where messages are posted in and out for the daycare and times of services, etc.

Mr. Hines stated that the variance they are seeking for the church is in Sign District 1 where there are no signs permitted. There are five pre-existing signs and they are going down to two and ever so slightly increase the size. It is not contrary to the public interest because they will be taking signage down. We will observe the spirit of the Ordinance as can be seen by the photo included. Justice will be done. Values of the surrounding properties which is almost all urban forestry center would not be diminished and literal enforcement of the provision could result in a hardship for them because they run a business there, Little Blessings Daycare, and per their cover letter, funerals, weddings, people coming from out of town, etc.

Mr. Lemay, just to be clear, asked if they were planning on removing the mast. Mr. Hines confirmed this.

Ms. Eaton asked with regard to the surrounding business districts if this sign met the Ordinance? Mr. Hines replied that in the surrounding business districts it would meet the Ordinance for one freestanding sign. They do have the one nonconforming freestanding sign that is there now. Ms. Eaton asked if the size meets the ordinance and Mr. Hines replied absolutely.

Mr. Jousse asked if this new 8' X 8' sign was going to be illuminated? Mr. Hines replied, “no.”

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott moved for approval as presented. Mr. Grasso seconded.

Mr. Parrott stated that this property is Single Residence B zoning, but anyone would know this section of Lafayette road is anything but single residence. In fact the Urban Forestry Center stretches pretty much from the Sagamore Creek over to Elywn Road. The church property is carved out of that. Across the street there is a used bookstore and a used car dealer. The character of the Urban Forestry Center of which this lot really is a part is not going to be changed. Secondly, this is a large lot. It's 600' X 300' and it's a busy road and fairly fast traffic by there, so he felt it was reasonable to say it should have a good-sized sign for visibility purposes. Also the signs that are being replaced are not awfully attractive at this point. Two larger, consolidated signs would be much more attractive to everyone going by and certainly more informative and hopefully more effective for the church. Mr. Parrott then addressed the criteria. The variance will

not be contrary to the public interest. He felt the public interest would be served by removing three smaller signs and putting up two more attractive, more prominent signs that can be read by the traffic that goes by. The spirit of the Ordinance is to promote the health and welfare of organizations, whether they are private, public or semi-private. In this case, there are two functions there – the church and the daycare center and the rectory beside it. He felt the spirit of the Ordinance would be observed by the Board's approval of the consolidation of these signs. Substantial justice would be done. He couldn't see that there was any public interest that would outweigh the advantage to the church by passing this. It seemed to him it's a positive move for the church, as well as for the people who are trying to find the church, the daycare center or the rectory. He stated that the value of the surrounding properties would not be diminished. The surrounding properties are woods on the back and both sides and commercial uses across the street. So there certainly would be no reflection on those or that would in any way diminish the value of those businesses. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. The Church is proposing a change which ends up almost exactly the same square feet of signage that is there now, but in a more attractive setting with two prominent signs as apposed to five scattered signs. He thought it met all the tests.

Mr. Grasso stated the proposal much better identifies the church and the Little Blessings Daycare and as presented to us, the intentions of the church. It is zoned single residence and it would be a hardship not to allow the church to properly identify itself and its events. He supports the motion.

The motion to grant the petition as presented and advertised was passed 6-1, with Chairman LeBlanc voting against the motion.

9) Case #7 -9

Petitioners: Stephen J. Lozan and Jessica N. Lozan

Property: 273 Austin Street Assessor Plan 145, Lot 59

Zoning district: General Residence C

Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure

Variance from Section 10.521, Table of Dimensional Standards, to allow a vertical expansion (construction of two dormers) 7' from a rear lot line where a 20' rear yard is required

SPEAKING IN FAVOR OF THE PETITION

Mr. Stephen Lozan introduced himself to the Board and stated he has been at the current residence for 6 years with his wife and two daughters and plans to stay indefinitely. He was requesting a variance to improve on the finished space that currently exists on the third floor. They currently have a building permit to improve on this space by bringing into compliance the stairway, finishing the existing space and adding a small three-quarter bath that is 7' X 7'. The variance requested would be to add two small window dormers off the back of the house in order to allow for proper ceiling height, natural lighting requirements and allow them to follow proper plumbing ordinances.. The request would have minimal impact on the home, the neighborhood or the general public in any way. The request is simply to modify the existing roof line. It does

not increase the footprint, lot coverage or encroach on their neighbors or neighborhood in any additional way. Their neighborhood is made up mostly of nonconforming lots. It's mixed use residences including single family home owners, condominiums, apartments, abandoned houses and neglected properties. The one commonality of this neighborhood is that everyone lives in relatively close proximity to each other. That being said, however, it doesn't mean that they don't want to invest in the property or the neighborhood. This improvement accomplishes this by adding to value of their residence as well as improve on and add to the desirability of the neighborhood.

Citing particular instances, Mr. Lozan stated that the variance would also be consistent with other variances granted in the neighborhood made up primarily of nonconforming lots. He felt those were granted for the same reasons his should be. They live on a corner lot on the corner of Union and Austin Streets, so the property is relatively unique. Any such changes or improvements to the home, because they are surrounded on two sides by City streets and are just one foot off the neighbor's lot line, would require them to ask for a variance. Even the most minimal expansion to the home would be impossible which is why this request to finish the attic and adding the two windows is really the only option. Mr. Lozan felt that in a historical context third-floor dormers were the preferable way to make a vertical expansion to older homes, make them more livable and in line with today's standards.

Mr. Lozan stated that this variance will not be contrary to public interest. The dormers would not in any way obstruct or infringe the public or anyone else's property. The dormers will have minimal impact in the existing structures in the neighborhood and he felt that it is in the public interest to have an attractive, livable property on the site that is sound, up to code and increases the value of their home as well as the desirability of the neighborhood. The spirit of the Ordinance is observed. It was his understanding that setbacks are established to ensure proper use of space and a guarantee we don't encroach or overcrowd on the surrounding area and properties. Small dormers on the third floor of an existing 3-story home do not add any additional coverage to the existing lot space or encroach on the surrounding properties in any way. It is in the spirit of the Ordinance to allow them to bring livable conditions into their home. He stated that substantial justice would be done. The addition of two dormers would only allow for natural light and air requirements, increase the structural integrity of the house and bring it more in line with today's standards with no detriment to the surrounding area or neighborhood. He felt that surrounding properties would not be diminished. The dormer/office/bath would increase the value of their home and surrounding properties. Their goal with this renovation has always been to simply update the home, not change the neighborhood, the City or anything in any dramatic way. Finally, literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. As mentioned, they believe this to be a reasonable request. Their request adds nothing to the footprint, coverage of the lot or proximity with neighbors. The request simply asked that they be allowed to add and make livable to existing third-floor space, modify the roof and to build the two small dormers.

Mr. Jousse noted that presently there was a landing and a set of stairs on the exterior of the home on the left side. Mr. Lozan indicated it was a temporary structure for building purposes. It is temporary so the builders can be as efficient in the process and get it done as quickly as possible. Mr. Jousse asked if the builders will then remove it? Mr. Lozan indicated, "yes." Chairman LeBlanc asked how far the dormer was from the edge of the roof and Mr. Lozan replied six or

seven feet from the lot line. When asked if the roof hung over the side, Mr. Lozan advised that it didn't. It came right down to the edge of the building.

Ms. Patty Keck introduced herself stating she lived with her husband at 293 Austin St. and she was present to advise the Board that they were in support of the project. Mr. Jousse asked if her house was the adjacent property. Ms. Keck advised it was two houses down.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Witham made motion to grant the petition as presented and advertised. Mr. LeMay seconded.

Mr. Witham stated here is a request for two rather small dormers and the Board has seen quite a few dormers come before them in the past year and many he found to be rather large, occupying the whole footprint of the upper level and really having in impact on the abutters and what not. But he found these to be about as small as they can get to still get the headroom they need and the light they want to get into that space. They only encroach half-way out on the roof's slope, so he didn't feel these dormers would have any impact on light or air on the abutters. He felt it was reasonable in the sense that they are trying to get some useful space up there and he was aware of the plumbing codes and headroom heights required and fixtures. Mr. Witham stated that the variance was not going to be contrary to the public interest. It's an historic area with a lot of historic homes and it's on the back side of the house. The dormers are very small in nature and tastefully done, so he didn't feel in any way it will change the essential character of the neighborhood and the spirit of the Ordinance will be observed. He stated that substantial justice is done to allow them some additional headroom space to get the bathroom space that they want. Their gain is not outweighed by any harm to the general public. The Board had heard only positive comments from abutters so he had no reason to believe the surrounding properties would be diminished by a tastefully done project with minimal impact. He stated that literal enforcement would result in unnecessary hardship. Mr. Witham felt that there is a special condition which was the 20-foot rear setback requirement. It's in one of these older neighborhoods where the house is built right on the rear yard, and these corner lots provide some challenges to homeowners when it comes to setbacks also. He felt there was no fair and substantial relationship between the purpose of the Ordinance and the specific application to this property. He felt this proposed use is a reasonable one. In terms of getting the headroom for the bathroom and some usable area, there really is no reasonably feasible alternative. With some of the larger dormers, the Board has felt they could be smaller as an alternative, and this one is starting out small. He thought it was well thought out and not aggressive by any means.

Mr. LeMay wished to add he thought that if there was any expansion to the third floor of this property, this is about the minimal expansion that could be expected.

The motion to grant the petition as presented and advertised was passed unanimously.

10) Case # 7 -10

Petitioners: Nancy J. Ratliff Revocable Trust 2000, Nancy J. Ratliff, Trustee

Property: 180 New Castle Avenue Assessor Plan 101, Lot 23

Zoning district: Single Residence B

Requests: Variances from Section 10.321 to allow the expansion of a nonconforming structure

Variances from Section 10.521, Table of Dimensional Standards, to allow:

- A 6' setback from the right side lot line for a 2 story addition where a 10' side yard is required
- A 15'5" setback from the front lot line for a 1 story addition where a 30' front yard is required
- A 6'5" setback from the front lot line for a porch structure where a 30' front yard is required
- Building coverage of 27.8% where 20% is the maximum coverage allowed

SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney introduced herself as representing Ms. Nancy Ratliff who was present, and stated that the description write-up is very similar to approval given in 2006. She thought it might be helpful as she was going to be referring back to that to furnish a copy of the site plan of that approval and an additional evaluation of property coverages on New Castle Ave. Mr. Witham noted that nothing was built as a result of the approval and Ms. Whitney confirmed it. Ms. Whitney stated that one of the items on the building, and she wasn't certain if this fell into the front setback, but they have decided to not do the addition over the front door. There is an existing landing that is already part of the building coverage. But in the process, since the application was submitted, they decided to do some pricing and decided to just restore what is there, so they are eliminating the request to put a porch over that front door. She had a question on the new zoning ordinance and that's why she didn't mention it in her application, on the front lot line, there is an item on the Ordinance where it's adjusted and you take the average of the neighboring properties. On her last plan of the set she showed a little larger copy of the site plan and took the averages of the two adjacent properties and the average front setback is about five feet. She didn't know why they would be asking for a variance for the 30-foot front setback.

Mr. Feldman confirmed she was correct. He asked if she was suggesting the side expansion and Ms. Whitney confirmed it was for the side – the 18' X 7' addition. She felt they shouldn't have to ask for a variance for that because of the averaging of the setbacks. Mr. Feldman agreed and stated she was correct. Going on to what was actually being built, Ms. Whitney started with the one-story addition on the right side with a 14.5-ft side setback. This is in the exact same configuration of the addition that they had approval for in 2006. What they have done, looking at the first photograph, if you look at the front and right side elevation you can see there is the main structure of the house and then you can see a little attached "L" with a shed-type pitched roof. What they will be doing is tucking the addition – 4 feet of it – will be that little void and it will project out of the building another 3 feet. The height of that where it intersects the higher

structure, is around 10 feet. They are doing that addition because it will open up the building which is very small – basically two rooms on each floor and on that right side they are going to open up, with this addition, into the existing living room and make that room a little bigger and let more light in.

Ms. Whitney stated that another part, not under the Board's purview, is regarding that area of yard. Right now the driveway backs right into that intersection and they will need to call Public Works on this, but they are proposing to be getting rid of that driveway and come in Wall St. and pull into the back yard where there is space for a couple of cars. So that side yard which is paved in front of the driveway will become a landscaped part of the yard. Regarding the rear addition, and in this case, if the Board looks at the site plan currently presented and the one that was originally presented, in the intervening years, a site survey was conducted and the odd shape where this property jogs in almost against the building, is actually closer to building than the tax map used for the first approval. On this second-story addition, she had slightly reconfigured. She had originally shown a 3' X 18' addition and she's now doing a 4' X 16.5' just to get a little further away and try to maintain a 6-foot setback from that corner. On the plan can be seen the evergreen shrubs and that's where the property jogs in within 18" of the building. She had tried to keep about six feet away from that point and right now the current existing setback is 1.5 feet. With the addition they would have it at 6 feet. The other part of this addition which is vertical expansion, on drawing 2 of 3, it shows the rear elevation. Currently it's a two-story structure with a one-story addition that runs the entire length of the back and projects on the right side about four feet.

Ms. Whitney stated that what they are proposing to do is most of the addition will be just another expansion of that to create another gable that comes out toward the rear of the structure. That gable will be in two parts as the footprint is created that gets narrower. The reason for going into the second story, again, this current structure is basically a two-room structure. The current bathroom is in the little shed space where the one-story addition connects. The headroom is just over six feet in that bathroom. For this addition they will be doing a couple of bathrooms and a laundry room and potential for a future elevator in the property. The first floor of this addition allows for a very small mud room and an expansion of the kitchen. The existing kitchen is about 9' X 14' and this allows them to open up the kitchen and provide rear access. This rear addition is built mostly over the one-story part of the residence with this additional 4' X 16.5' that adds coverage. With the irregular shape of this lot, anything that could be done to the back of this building would most likely require a variance. They have strived to keep the increase of coverage to a minimum.

In terms of hardship, Ms. Whitney stated that she saw two. One is the actual size and shape of the lot and location of the building on the property which puts it into a 1.5' foot setback. Basically, the neighboring property comes right into the back yard of this one and it's very tight into the existing house. The other bigger hardship happens along the street. When they did this the first time in 2006, they took a survey of New Castle Ave. from Humphreys Ct. down through Driftwood Lane, looking at the properties just that are abutting New Castle Ave. New Castle Ave. is the demarcation line between General Residence B and Single Residence B districts. Across the street in General Residence B, you're allowed to have a 30% coverage and across the street, you're down to 20%. Given the nature of how this street was settled, it's very similar – period, size of lots – and Ms. Whitney was always puzzled, like they did on Middle St., why they

didn't drop the line back to one lot back to New Castle Ave. which they have done in other parts of the City. The lots on New Castle Avenue are more reflective of General Residence B and Single Residence B. Once you get behind, the lots are bigger and the properties are a little bigger. The results of that survey came up with an average building coverage in the zone of 26.7%. They were a little over that. The average lot coverage was 1,469 s.f. of which they were a few hundred feet under. Given the shape of this lot, even though they are adding coverage, they are maintaining some good setbacks in terms of the street side. You have the street, but on the right hand side they have good air, no setback problems there and to the rear they are 39.5 even with the addition. She felt they were not encroaching on light and air. In terms of the shape and scale of these additions, they are very similar to what has happened on other properties or what was originally built where you have a gable and a cross-gable. The new additions do not go higher than the existing roof line and in the case of the rear addition, the addition over the existing one-story space goes up to the ridge and as we step out, that drops down a little bit in height. And again, on the corner, they are changing the roofline on the left-hand side of the one-story.

Ms. Whitney stated that, in drawing 3 of 3 showing the left side elevation of the existing residence and then the existing structure on that 4-foot addition, On the small bank of windows where there are 4 windows, that is over existing footprint, but instead of the bit shed roof, they have done a smaller one to bring down the scale of that on that side. She felt these additions are in scale with the surrounding properties, that there is no diminishing of property values in that this is a very crowded area. The property to the right side is at 56%. The immediate property to the left is almost 36%. Given the numbers they have, they are in keeping and they still have a fair amount of yard space compared to a lot of the other properties. She felt light and air are maintained with the additions because they are not butting up against existing structures. Substantial justice would not harm the public but it would allow this fairly modest expansion to have great benefit to the homeowner, allowing functioning bathrooms, a little bit bigger kitchen mud room. In the spirit of the Ordinance, this is fairly common with these completely nonconforming buildings without over doing the expansion to make these building viable space and still maintain yard space.

Mr. Grasso asked on the proposed lot coverage you have existing residence of 930 square feet – Ms. Whitney noticed Mr. Grasso was looking at the old plan from 2006. She realized her handing out the 2006 approval might be confusing, but she handed it out to compare with what was currently proposed. Mr. Grasso wanted clarification, too of the porch not being done. Ms. Whitney indicated that would not affect coverage because of the landing currently there.

Mr. Jousse was wondering why there was such a large addition to extend the living room seven feet. He had a problem with that. If it was to match the existing bump out, he would be much more comfortable with it. Originally they were thinking, because this they have to take this through HDC, that very often for these kinds of houses, a one-story porch would be added to the side just like that. Ms. Whitney stated that's a very common dimension for a porch, six to eight feet. She felt that you could see how that fits a little better by looking at the elevations.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Allison Lambert stated that she was representing David and Billie Tooley, the neighbors next door at 166 New Castle Avenue. Chairman LeBlanc asked to the left or the right and Attorney Lambert indicated to the right as you faced the building. She stated that the Tooleys oppose the variances because the design that's being proposed would have a negative impact on their property value. They feel that there are alternative designs that could and should have been considered. In the Tooleys' opinion, this isn't really a minor change that's being proposed. It will have an actual impact on their house and on their day-to-day living. She stated that the plan was contrary to public interest. The proposed additions do increase the lot coverage and decrease the side of the yard and open space on the yard. In addition, they create overcrowding in an area that is already highly congested. As to Mr. Jousse's point, this is a large expansion toward the Tooley's property and narrows what is already a very narrow passageway between the two buildings. The addition does violate the spirit of the Ordinance in that it does take away from light and air that does exist today and again, narrows this tight space. They felt that this is the kind of project where the purpose of the Zoning Ordinance should be considered which is to look out for the interest of the neighboring property owners and make sure there is not any overcrowding of the lots.

Attorney Lambert stated that the Board should also take into consideration that the visual environment of the neighborhood will be impacted by these additions because the additions will detract from the open views of the water. The abutters felt that substantial justice would not be done if the application were approved because they felt the applicant did not give enough consideration to the impact that this particular design will have on the community and there are other less negative designs with a less negative impact that should be considered. The value of the surrounding properties will be harmed. The Tooley's property in particular would suffer direct loss of water views and again a loss of air and light space that is next to their home. The close proximity of the proposed structure to the living space of the Tooley's home will also have an impact on their resale value because the way these homes are situated, you can look into one home from the other and this could have a direct impact on the desirability of the house for potential future buyers. Finally, they do not feel the applicant has demonstrated unnecessary hardship exists. Again there are other designs they feel could add similar square footage and increase the size of the house without such an impact on the Tooley's property and the community at large. This is larger than some of the other lots in the area where other additions have been proposed and they think there is room to work here that haven't been explored. Attorney Lambert stated that the fact that the application had previously been approved had no impact on the current application and the application should be looked at in light of today's economic climate and with a fresh set of eyes and a fresh understanding of what exists on the ground today. In their opinion, they think the application should be denied.

Mr. Witham asked if the main opposition is to the 7' X 18' addition on the side. That's the only part that affects the Tooleys? Ms. Lambert answered that's the part that has the most impact on the value of their property. Mr. Witham stated the way the Zoning Ordinance is written is to protect the abutters light and air, etc. and they do that through setbacks. And the setback to their property is 50% more than required. So right now it's a one-story addition that is more than 50% of what is required to protect the Tooley's. In terms of the view, unless you have a view easement over the property it doesn't really hold water, excuse the pun. So he didn't understand the objection and he was trying to find how this addition hurt them? Ms. Lambert stated the actual addition that is being proposed does impact the Tooley's residence and their day-to-day

life, so combined with the other additions that are being put forward in this application, when you take the entire application into consideration, they felt, as presented, it has a negative impact because of lot coverage, loss of space, loss of air and light that comes through and simply overcrowding of an already crowded area.

Ms. Rousseau, regarding Ms. Lambert's assertion of diminution of property rights asked if she had any evidence to support that position? Did she get an independent licensed appraiser to support that position that she was putting forth to the board? Ms. Lambert replied they have taken the property value statement from the owner themselves and they have another person that is going to give some further support to why the owners came to that position. A property owner is allowed to give an opinion as the value of their own property. Ms. Rousseau stated that, then, Ms. Lambert had no supporting evidence to that position other than their opinion. Was that correct? Ms. Lambert confirmed that was correct.

Ms. Jennifer Ramsey introduced herself as speaking on behalf of abutter at 166 New Castle Ave. and she presented exhibits for the Board to pass around. She stated she would be echoing a lot of Ms. Lambert's comments, but specifically she knew the members had a site plan as part of the presentation reviewed. It's critical to note that in a neighborhood like this, everything is scaled down albeit proportionately, but everything is scaled down to maintain a sense of scale and space. The illustration that she passed out shows in better terms for, standing on the neighbor's patio, what 20 feet feels like. There is basically 20 feet between these two homes and that drawing, the photograph and the rendering below it is an illustration of the proposed addition. That really shows the difference of what is 20 feet, what is 17 feet so you can see how that feels, spatially when standing on their patio. The attached photo behind that is a picture from their dining room and this is very similar feeling of the proximity of one home to another. The site plan might look reasonable. There is grass on both sides, there is a driveway which is narrower than most average driveways in most suburban neighborhoods. The grass is just a sliver, so she wanted to show this to indicate that is how close the neighbor is and that is how much closer the additions will bring that neighbor from, say, their living room to a dining room.

Ms. Ramsey noted that the lot was 57 % larger than the adjacent property. The adjacent property has a lot challenges. This one has a lot more space around it. If you need 192 square feet additionally, the back yard is quite large. Perhaps that's where the addition might go as a more effective location that would not affect the neighbors as detrimentally as moving immediately to the right. She stated that the hardships are not such that the side yard addition is the most efficient location for the additional 192 square feet. Again the back yard is sizeable. The square footage could easily be attained in that area, or vertically – dormers on the roof, historically a place to attain more living space in the home. These are just some points they wanted to make on behalf of the neighbor at 166 New Castle Ave.

Mr. Witham stated there was a tree on the proposed drawing. Where would you say the line was, the setback for the addition. Ms. Ramsey indicated the tree was, she believed, at the top of the granite steps. That tree, if you look at the site plan, there was a pair of curves up to that side yard and that tree sits just under those and the Tooley's lot line sweeps out almost in the direction of the stop sign. Mr. Witham stated the setback requirement as he could see was probably a couple of feet into the driveway. Ms. Ramsey confirmed this. Mr. Witham stated Ms. Ramsey said there might be other areas for them to get the additional square footage that they want. That whole

back yard is considerable size, in the dog leg portion of Ball Street. Mr. Witham indicated it might be possible, but it looks like they are probably going to run into a setback issue back there as well because it narrows down so much. A setback issue back there would not negatively affect the neighbor who is across the street. You're not up against someone, you're against the street. Mr. Witham indicated he was trying to grapple with this point. It's conforming in terms of setbacks. To his mind this is someone who doesn't want to lose their water views. Ms. Ramsey indicated their water views are the only bit of privacy they have and there's a fence just behind that in the photograph and the patio is just right there so you don't feel like the neighbors are right there are much as they are.

Chairman LeBlanc asked where the first photo was taken. Ms. Ramsey indicated it was taken standing on the patio of 166 New Castle Ave and the next one was taken inside the home and behind that little jog.

SPEAKING TO, FOR OR AGAINST THE PETITION

Ms. Whitney returned and was given two minutes by the Chairman LeBlanc. Regarding the first speaker she disagreed in the context of the neighborhood. Relating to the second exhibit the perspective seems a little odd here on the sketch because it looks like you're standing in the middle of the driveway. So she would like the Board to take this with a bit of a grain of salt. She would like to also refer to the last page which refers to the site plan of all three properties. It's a 20 scale site plan. Looking at the adjacent right side property, you can see where that little jog is. A good 50-60% of the existing residence stands in front of this property. We probably should be talking about views but it goes to the argument of overcrowding and she wanted to reiterate that they are 14.5' and if there wasn't a coverage issue they could even be much closer to this property. She felt that they are not overly infringing on their views because most of their property is in front and in these tight neighborhoods you aren't expected to have complete views from all corners. If they were in this property, they would want to have an addition here because it's a very wonderful part of the property to have a little more living space. This year, the particular property in terms of light and air was granted a variance to connect the garage and vertically expand that. So everybody needs to do some things to make these properties a little more into conformance and to give these small houses some livability. We are not in opposition to that, but everything that gets done cuts away a little bit and she felt that doing the major addition of the existing footprint if the existing house with a small butt out on the rear side really kept the view imposition to a minimum and gave them the space we needed. Basically, the issue was, given the floor plan and structure of the house, how you fit a sizeable addition and make it work with the interior of the house without having to rebuild it. This little one-story addition really had a very minor impact on that side yard.

Mr. Jousse had a short question for Ms. Whitney. He needed some clarification of the variance. He stated there is no side yard setback requirement for the addition to the living room. Ms. Whitney answered no, they are conforming to the side yard. Mr. Jousse said the Board is only looking at a front yard setback for that particular project. Ms. Whitney answered yes, but when she spoke in the beginning she cited the new Zoning Ordinance and determined that they are alright on the front yard setback as well. Mr. Jousse then said we're clear on the setbacks for the one-story addition, so they're only concerned with the rear of the house and the lot coverage. Ms. Whitney confirmed this was correct.

Ms. Ramsey returned to speak on the approval that 166 New Castle did receive back in January. It may be recalled that was four years in the making requiring multiple concessions on the part of the home owner to meet all of the requests of the neighbors and multiple planning boards as well as the Historic District Commission. The homeowner did make a great deal of concessions and ended up with a much smaller addition than they wanted to. They in fact, pulled their garage toward Fernald Ct. away from 180 Castle Ave to open up some space, light, ventilation and they suppressed the garage to make sure primary views were maintained. It was their choice, but it was a team effort on the part of the Planning Dept., the HDC and themselves and many years in the making. She felt it was important to know it wasn't an easy "get" for them.

With no one else rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman LeBlanc noted to the Board that there were still two variances, but the second variance has two parts which were a 6' setback from the right side lot line for a two-story addition where 10' side yard is required and building coverage of 27.8%, where 20% is the maximum coverage allowed. Some discussion occurred with regard to the accuracy of the percentages and the conclusion was this was accurate.

Mr. Parrott moved approval and to see where the discussion goes. Mr. Witham seconded.

Mr. Parrott stated that it turned out there were fewer variances than originally prepared. The front landing has been deleted as withdrawn by the applicant. The side toward lot 24 has been shown to be in conformance both at the side setback which is 14 feet at the tightest point and the front setback is not an issue any more because of the averaging provision which Mr. Feldman addressed. So the major construction is the addition off the back. His general comment was that it was a great example of an odd lot, in terms of its shape. It is not overly large, although larger than some in the neighborhood and it's very odd and sort of skewed "L" shape. The house is not even square to the front of the street. Given all that, if the homeowner wishes to enlarge it, they will need to do some careful design work and in Mr. Parrott's opinion that has been done. The major part of the addition is toward the back. The other addition has been reconfigured to better fit the lot in terms of getting a little more clearance with respect of the setback that goes to the inside part of the "L."

Mr. Parrott thought there had been a good deal of effort and thought given to the design of the project and the most important aspect is whether the Board agrees whether the coverage issue is the key thing. Having moved to approve it he addressed the particular points. This will not be contrary to the public interest. The majority of the new construction is to the back yard, as the neighbors have actually endorsed. The other neighbor is on the other side of the street. In his mind it was hard to say the public interest is going to be injured if this house is expanded upwards and to the rear. The spirit of the Ordinance will be observed. The spirit of the Ordinance is always to allow people to enjoy the use of their property provided they don't trample on the rights of other people, which in residential areas usually means the neighbors, so that's the question before us. Substantial justice would be done. In this case it's the balancing act between the interest of others, including the public, versus the interest of the homeowner, which in this

case is to enlarge a pretty small house on an odd-shaped lot. It was a close call for Mr. Parrott, but he thought in this case the shift goes to the owner of the property, because they obviously have done a careful job in terms of architectural design to fit the additional space onto the existing space and the lot and tried to minimize the negative affect on the neighbors. The value of the surrounding properties will not be diminished. It struck him that this will certainly be a better-looking house – that rear addition right now is no prize. He thought the additions right now will look attractive on the house and reflect well on the neighborhood. As everyone has pointed out, it's a congested neighborhood already, so what your house looks like is even more important than some place else where there are a lot of trees between the houses, perhaps. Lastly, literal enforcement of the provisions of the Ordinance would result in unnecessary hardship. The unnecessary hardship in this case is the very odd shape of the lot and if you don't make these concessions to make the additions as they are designed, there is probably virtually nothing that can be done with the house in order to make it a little larger. And as it has been pointed out, it's a very small house anyway. It's a close call, but on balance, for him, he thought it passes the test.

Mr. Witham agreed with Mr. Parrott's comments. He added that for the Board, they were actually dealing with two variance requests here. The first one a 6' right side yard setback where 10' required and this is driven strictly by the odd shape of this lot where the neighbor's rear yard juts into their yard. It almost appears as if it was something sold off at a later date after the home was built, but it is a very unique situation where this property has a chunk cut out of it and it has created this scenario where they need 4' of relief, albeit going off at an angle. So in regard to this setback, this is a setback that doesn't run the whole length of the property line. It only comes off the face of the house four feet, so we're really talking about an area roughly half the size of this table for two stories. Considering where homes sit on property lines on New Castle Ave., he felt it was reasonable. Again, one of the major criteria is that the essential character of the neighborhood is not changed. This addition will not alter the essential character and the six' setback was still a great distance to the nearest structure of either of those two abutters, so there's no real infringement for any of the abutters regarding this setback request. He found this to be very minimal, especially considering the shape of the lot.

Mr. Witham addressed the second request, a 27.8% lot coverage where 20% is required. He agreed with the applicant that this is a common problem along New Castle Avenue where it more closely resembles Single Residence A where 30% is allowed. It's more in keeping with the historical nature of the street and it's more the homes along the back side down the side street that probably 20% is more applicable to. Usually when you see a lot coverage go up, you look at density and he felt the addition off to one side being a one story addition with a very shallow pitched roof, he didn't find any real density issues there. And again in terms of change in the essential character of the neighborhood, the lot coverage they're requesting although it's roughly 8% greater than what's required is within a percent of the average along New Castle Ave and in regards to the immediate area, it's less than half the lot coverage of their nearest abutter so again he didn't see any change in the essential character in terms of density if you're half the lot coverage of your closest abutter. He thought the bulk of the volume is along the rear of the house and there's a minimal relief there sought for the setback. The area that accounts for most of the lot coverage infringement is a low one story addition that more than meets the setback requirements. He understood the neighbors objections but he felt this is a well thought and reasonable petition.

The motion to grant the petition as presented and advertised, and as amended that evening, was passed unanimously.

11) Case # 7-11

Petitioners: Darcy E. Davidson Revocable Trust, Darcy E. Davidson and Robert M. Snover

Property: 60 TJ Gamester Avenue Assessor Plan 269, Lot 15

Zoning district: Single Residence B

Request: Variance from Section 10.572 to place an accessory structure (emergency generator) 5' from the property line where a 10' setback is required.

SPEAKING IN FAVOR OF THE PETITION

Ms. Darcy Davidson addressed the Board. She lives at the residence at 60 TJ Gamester with her husband Robert M. Snover. The home is located in the Woodlands Development and they have lived there for 16 years with their children. They would like to be able to place an automatic electric generator which goes into a galvanized steel weather-protected shed. There is a five' setback on the property. They are fortunate enough to be located next to the homeowners' association's undevelopable, wood parcel that is owned in common by all of the homeowners along their western side. This makes their closest neighboring home 120 feet through the woods. This special condition of this structure makes the location of this generator the most just, equitable and reasonable for all. If it were placed on the eastern side it would be approximately 15 feet from the eastern neighbor's bedroom which is not a preferred alternative at all. Locating the structure in their back yard would place it in their relatively small grassy area as a majority of their back yard is wooded and protected by a homeowners' covenant against cutting trees and that would impact the enjoyment of this area for recreational purposes of their children. She stated that granting a variance of this structure is not contrary to public interest as it is located next to the large, unbuildable wooded parcel. The spirit of the Ordinance would be observed as it has the least impact to both our neighbors. The location of the structure has extensive landscaping in the front protecting it from being seen visually from the road and there are a lot of trees between their property and their western neighbor. Locating the structure on the eastern side property would not be just, fair or equitable to their eastern neighbor. Locating in their back yard, again, impacts their ability to enjoy their back yard for recreational use.

Mr. Grasso asked what the size of the cement landing for the structure was. Ms. Davidson replied it was 2' X 4', parallel to the house for 4 feet and stands at a height of 2' 8". Mr. Grasso noted that the lot is 250 feet deep and there is no place in the back yard to place it where you would not need a variance? Ms. Davidson replied it would be right in the middle of the area where there is a trampoline for her kids and if they're not doing that, they're playing lacrosse or whatever and highly impacts their ability to use that space.

Ms. Rousseau asked how large was the lot and Ms. Davidson replied approximately 25,000 square feet. Ms. Rousseau stated then there was a lot of space in the back yard. Looking at the criteria to be met, the Board has to decide why isn't it reasonable for them to put in their backyard when it appears that they have plenty of space to do so other than the fact that they just

didn't like it there? Ms. Davidson replied that because they have a relatively small grassed area that allows for freedom of movement and that sort of thing throughout the space for their children to play games, etc., it would totally be in the way. And so it impacted their ability to enjoy their space as we currently have it. We are looking to put it next to our chimney, right below our bedroom and that's an area that is tucked away, nobody goes there and is well hidden. So she thought it protected the whole aspect of the neighborhood as well as their ability to enjoy their property and the neighbors to be able to enjoy theirs.

Mr. Witham commented that with some of these generators, the further away you go from the electrical box in the house, they lose their power capacity and it starts to become less effective. A lot of the expense is burying wire to code. If it had to be put 200 feet in the back yard, they're better off going without electricity. He also asked for clarification that this was just for emergency purposes and this isn't to fire up some weekends for some "blow up house thing." Ms. Davidson answered that it was an automatic electric generator that does come on once a week at a time they control. They have talked with the neighbors and they are quite willing to do it when it doesn't impact their sleeping time or any enjoyment of their property. Mr. Witham wanted to clarify that there was a 100-foot buffer in those woods between you and the closest abutter. Ms. Davidson confirmed it was 120 feet.

Mr. LeMay wanted clarification of the "galvanized steel weather shed." Is that the sound reduction enclosure that is listed in the generator data sheet or is this some other type of structure? Ms. Davidson replied that it was just as is indicated on the data sheet and it is the sound reduction enclosure. In considering it for the building permit, it was listed as a shed. Mr. LeMay clarified that, in addition to the generator which would have an enclosure as in the picture supplied? Ms. Davidson stated that the enclosure in the picture was considered the shed. Mr. Feldman commented that in the industry, what's being found is that more and more people are applying for generators these days in the City and those sound protectors are actually the covers that go over the actual generator mechanism. The industry defines them as a "shed." Mr. LeMay stated that his point was that the data sheet indicated not only the galvanized weather protected cover, but also indicated a further "added sound reduction with enclosure lined with sound-reducing panels for further noise reduction" which suggested there's an additional cover. He was concerned about that and also whether there was some hope of reaching 65 db at five feet away from a generator, which was a suggested stipulation or a standard that they are not asked for a variance from. Mr. LeBlanc asked if this was gas-fired. Ms. Davidson indicated it was propane.

Mr. Grasso asked what the decibel level was at the property line in its proposed location. Ms. Davidson did not have that information, but when they submitted their petition for the building permit, they carefully reviewed their petition and this was the only thing they required them to get to grant that petition. Mr. Grasso asked Mr. Feldman if that was true. Mr. Feldman stated that they have seen a huge influx of generators being proposed this year, many of which have met the accessory structure setbacks. What they have been doing is looking at the noise standard within the zoning ordinance, 65 db at the property line is the suggested sound levels during normal working hours, 7:00 a.m. to 6:00 p.m., in a residential zone and that is what is being set as a stipulation on any permit going out of the door that doesn't need to come under the Board and that is what's being suggested here. The only time it becomes an enforcement issue is when there is a complaint against it and they would go out and determine whether or not they would be able to

meet that 65 db at the property line. It really is the property owner's responsibility to do so and knowing so, when they get their permit and when it's stipulated on their permit – every permit that goes out the door is stipulated the same way – if there is a complaint made and they can't meet it, they are going to have to make adjustments in order to meet it. Mr. Grasso indicated he felt uncomfortable, with the applicant's stating she didn't know what that would be, approving such a stipulation with a variance if it's something the manufacturer can't meet. Mr. Feldman stated it was very difficult because what they find is that every generator is different. If you have a diesel generator vs. a propane or gas, they can be exercised at different levels. Diesel can only be exercised at 100% power where gas can be exercised at something less, which means it's not as loud. Sound proofing makes a big difference. Sound becomes a very complicated matter. The only way they have been able to address it is to let the owner know this is what needs to be met and if that isn't met, there will be an issue. Whether the Board chooses to stipulate that through this process or not, they will stipulate it on the permit that goes out the door. Mr. Grasso indicated he felt concerned that Ms. Davidson was not sure and the Board doesn't know if the manufacturer can adhere to approve something that's unreadable. Mr. Feldman indicated that most of the generators that they found, the db levels that they provide in their specs are for some reason at 23 feet, not 10 or 25, but 23. so even if they provide a db level at 23 feet, whether that meets the sound level at 5 feet, it's going to be difficult to say.

Mr. Jousse commented that this is an emergency generator that's going to be activated, except for the period test done on it, when nobody else has power. He thought the City is going to have a lot more interesting things to do than to go out there and check the decibel setting on an emergency generator. It's something that's going to be used maybe once a year, hopefully, not ever – he hoped the applicant was wasting their money – and he thought the whole City is hoping they are wasting their money. He thought the only concern they would have is when it's being tested. In the location where it is, there will be quite a distance between the neighbor to the left, which will have the applicant's house in between the noise generator and the person on the right has a 100+ feet of wooded lot. He didn't recall seeing the neighbor's house from the applicant's chimney when he went out and checked out the property.

Mr. Feldman wanted to clarify so that everyone is on the same page, when those are running during an emergency situation, they are exempt from noise standards. The noise standards they are worried about is during the weekly exercises. They will have hundreds of these things being exercised around town on a weekly basis. So they are trying to work within the confines of the Ordinance to regulate that as best they can so that people aren't exercising them at 9:00 p.m. or 10:00 p.m., but during the 7:00 a.m. to 6:00 p.m. hour and that they can meet that decibel level best as possible during that time period.

Mr. Witham asked how long the exercise took. Ms. Davidson indicated 15 minutes to cycle. Mr. Witham asked Mr. Feldman, in decibel levels that have come across his desk, has anyone compared this to what a lawnmower decibel level is? Mr. Feldman indicated they are a little quieter than a lawnmower because of the shed coverings. Mr. Witham was trying to get a sense, is it like someone cutting their lawn with a quiet lawnmower for 15 minutes? Mr. Feldman indicated that it was actually a little bit quieter than that. Smaller, portable generators that you pull out of your house are actually louder than these generators. However the noise factors when you start multiplying everyone's neighbors exercising them, we want to make sure there is some level of courtesy. Mr. Witham suggested, if you have a homeowners' association, they could

agree on 15 minute-window for everyone. Mr. Jousse said or the Board could decide and tell them they can only test between 11:00 a.m. and noon every Saturday.

Ms. Eaton commented that she wouldn't be supporting the motion as she didn't think the hardship is shown. She thought there was plenty of room to put this 10 feet from property line and she understood that the property line is a conservation area, but she thought there are so many of these generators proposed and she has seen them put into tight neighborhoods where people have put them in their back yards and hurt their playable area. That is not a reason for a variance – that they can't have a trampoline or can't play lacrosse in your back yard. So she hesitated to think that was worthy of a variance regardless of what's beside the property line. Mr. Witham stated that the other reality is that they need the variance because the City considers it a "shed." And it's 32 inches high. Ms. Eaton interjected it still makes noise. It's exempt when it makes a noise during an emergency, so again, it's a propane generator and do you need to have it two hundred feet away from your propane tanks and then wire it back. He thought it was making a mountain out of a mole hill. Ms. Rousseau stated that a long-term view should be taken as well because there is common area next door, but that may be sold and then someone may not want a generator up on their property line, you just don't know. The variance goes with the property and right now they have plenty of space to put it on their property without infringing on somebody else's rights.

Ms. Davidson stated the common property is owned by the whole. It is an access area owned in common by the Association and not a buildable lot so it can't be sold.

Mr. Jousse asked clarification as to whether this is a planned community. Mr. Feldman indicated that it was a subdivision owned by the homeowners' association.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott made a motion that the petition be denied. Ms. Eaton seconded.

Mr. Parrott's concern was that the City had two ordinances. One is the Zoning Ordinance and one is in the general ordinances of the City that deal with sound. The key question here is what is the sound at the property line? That question was asked and wasn't answered. That is not an unknowable answer. That can be provided by the manufacturer because these things are all tested. So some engineering needs to be done on this and the answer can be provided. It seemed to Mr. Parrott that the Board would not serve the City nor the applicant by granting it, putting a stipulation on it and say going ahead and build it and then if it doesn't work out, we're going to tell you that you must go to the expense of moving it or come back to the Board and try to explain why you did what you did and that doesn't seem wise. Also this is not time sensitive. It doesn't have to be done this week. He thought the legitimate questions that have been raised by Board are answerable and the applicant can come back and present the information and everyone will know the answers. And the other obvious thing, as several others had pointed out, is that

these are large lots, 250 feet deep and there was no need to explain from a technical point of view why it has to be crammed in on the side of the lot – he understood the next lot was “fake,” but that was almost irrelevant. There is more than enough room on the back of the house to be put there and be landscaped or put a little structure over it. There are all kinds of things you can do to perhaps not make it offensive. It certainly is not going to bother anyone else in the back of the house because no one living in the back of the woods. It just seemed to him there was more than enough room on the lot to put it back there and the Board also needs the answer with respect to the db level. The applicant may find out it’s very easy to meet these requirements or there might be some really compelling arguments that haven’t been presented as to why it has to go between the chimney and the lot line. So he thought, for all those reasons, it doesn’t pass the tests to his satisfaction.

Ms. Eaton agreed and as she pointed out earlier, there are several of these showing up in neighborhoods everywhere and she thought it was tough to say a variance is grantable when there are other places to put it on the property. Her main concern was that 10 feet was going to mitigate the noise and she thought it was a minimum for a property with a generator that does make noise on a weekly basis.

Mr. Witham indicated he would not be supporting the motion. In regard to the dBa level, they are not here for a variance for the dBa level. It’s not part of the application. It only comes up if it becomes an issue and he didn’t feel it was something they were cramming into this tight space. It’s a propane-fired generator for emergency uses. The located it, probably near the electrical box in the basement and near the propane tanks that are located outside. He felt it was the most obviously location. There are issues about the enjoyment of the back yard, but it needs a setback variance because it falls in the category of a shed. He didn’t see how the Board could treat this 32-inch high small structure as a “shed.” It is the noise it generates during an emergency is exempt from the ordinance, and even the noise it generates when it gets exercised. There is no variance request here for the dBa level of this unit. He supposed the homeowners do take a risk if they want to install it and it doesn’t pass the 65 dBa if someone does complain and that person would be 120 feet away through dense woods. He doesn’t feel the Board is setting precedence for other type neighborhoods. Again, he thought it made total sense to put it where they are putting it. He didn’t see any harm to anyone. To make them find another place on the property so that it’s five feet further away, he didn’t see where there is any gain to anyone to have it five feet further away in terms of noise, or that five feet is going to make any difference. It will just be needless added expense for the applicant. He would not be supporting the motion.

Mr. Grasso stated he would be supporting the motion. He thought if it were five feet further off the property line, the variance wouldn’t be needed. It would be moved back out about 20 feet and that’s the corner of the house, 10 feet off the property line. It doesn’t have to be 200 feet, but 20’-25’ farther down and five feet farther up the line and it would not need a variance. He thought that was an alternative and because of that he would be supporting the motion to deny.

The motion to deny the petition as presented and advertised was denied 5-2 with Messrs. Jousse and Witham voted against the motion.

Mr. Witham recused himself from this case and Mr. Durbin assumed a voting seat.

12) Case # 7 -12

Petitioners: Karen E. Mountjoy Revocable Trust, Karen E. Mountjoy, Trustee

Property: 62 Orchard Street Assessor Plan 149, Lot 30

Zoning district: General Residence A

Requests: Variances from Section 10.521, Table of Dimensional Standards, to allow:

- An accessory building (1½ story garage) to be located 4’7” from the right side lot line and 4’4” from the rear lot line where the required setback from both lot lines is 13.5’ (75% of the height of the structure)
- Building coverage of 31% where 25% is the maximum coverage allowed

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard W. Pelech stated that he represented the applicant and circulated a copy of the tax form for the property and lot coverage calculation in the other. He stated he did not know how it became advertised at 31%. When he filed the application it was for 26.4% and that is what the lot coverage actually is. It goes from 24.5% to 26.4%. He didn’t know how it came about that was unless someone calculated the sand box as being a structure, but it’s certainly not 18 inches in height. Attorney Pelech took his calculations from the tax card and there is more square footage than is shown on the tax card. There is another 50 or 60 square feet of lot coverage that is not shown on the tax card, but the information on the calculation he previously submitted is correct. Perhaps Mr. Feldman can explain how it got from 24.6% to 31% or it could be a typo, but it is actually 26.4%. Mr. Feldman indicated he was going to check that, but he takes his information off the information submitted on the building permit application, not from the tax cards.

Attorney Pelech referenced the packet he had submitted for some background. The first sheet is simply the site plan. It’s interesting that Attorney Pelech had three cases on that street in the last year to year and a half and, for some reason, Orchard Street is really screwed up from a survey standpoint. As could be seen on the first sheet, where the fences are, for every single piece of property that he has seen on Orchard Street the property lines don’t match the lines of modification. In other words, people think that the property lines are one place, but they are not. The fences that are there are skewed to the left in relationship to the property line to the right, if you are looking at it from Orchard Street. That shows the existing house and the existing garage in the rear corner. One of the reasons that he was hopeful that the Board was able to view the property is that the garage is a classic and something he had never seen before. It is a galvanized metal garage built from a kit that you could order back in the 30s. If you went inside it, you can see that the bottom of it is fairly rusted and it has a distinct list to the right looking at it from Orchard Street. The kit included metal panels that were assembled and very weak metal trusses for the roof. Needless to say, the Mountjoys don’t put anything of value in the garage, especially in the winter, because they live in constant fear of snow loads collapsing the garage. The bottom of it is rusted out, sharp metal and definitely needs to be replaced. Attorney Pelech stated that the second page shows proposed Garage Option A and that is the preferred option. They have given the Board two options and would prefer Option A. The garage goes from 18’ X 19’ to 20’ X 22’, an increase of 98 square feet or three sheets of plywood, roughly less than what’s encompassed by the tables in the room. So this second page labeled A-1 in the right hand corner,

shows the proposed Garage Option A. The garage is the same in A and B. It's just where it's located. Option A would locate it 4.7 inches from the side property line, 4 feet 11 inches from rear property line. The third page is for Garage Option B and this moves it further away from the rear property line, 7 feet 11 inches, but by moving it away, you move it closer to the right hand property line. As he said, Option A is their preference. The next page is the tax map 149. He circulated and read into the record a petition of support signed by all the seven direct abutters.

While the information was being distributed, Mr. Feldman stated he checked the information on the building permit for the building density as they advertised it and the information that he has suggests, as he said, that the existing coverage is 29.2%. If there is other information that suggests otherwise, he would like to see it as it would certainly help. The other piece of it and just to try to make it easier on the Board during their deliberation is that Attorney Pelech is suggesting two options to the Board. What Mr. Feldman did was take the two most extreme setbacks that were being requested and advertised those setbacks so they have room to move the building within an envelope of what they were originally requesting. So Option A or Option B, whatever you approve for a setback, gives them the ability to move that building within that setback area. Chairman LeBlanc asked this is 29.2% coverage? Based on his information, Mr. Feldman has 29.2% which suggests the coverage would be 31%. 25% is allowed. Attorney Pelech asked clarification of what he was working from and Mr. Feldman detailed how the figure was determined from the building permit application. Attorney Pelech stated that he thought the map is what the problem was. 21' X 31' can't equal 1,047 sq. ft.. It showed 30' X 22' and that's 660 sq. ft. In the tax collector's card is what the actual dimensions are. He apologized. 21' X 31' does not equal 1,047 sq. ft. and he didn't know how that came up. The 7' X 19' deck is the front porch and that's 140 sq. ft. and 7' X 19' doesn't equal 170 sq. ft. The detached garage is correct. He took the blame for that. Mr. Parrott injected, that speaking of the detached garage, is there any reason or does anybody know why it isn't on the tax map? It's been tax-free all these decades, has it? Attorney Pelech stated he didn't know. It's been there for years. Mr. Feldman pointed out it was in the building information. Mr. Parrott agreed that it does show it in the outbuilding information summary.

Attorney Pelech returned to the tax map and noted that the cross hatched property is the subject property and the people who signed the petition stating they had no objection are all of the direct abutters. He went through additional pages showing the footprint of the garage at 22' X 20' and the second floor of the garage which was a storage area. The reason they would like some storage area above the garage is the basement in the home is very wet. They can't store anything there of value and they would like to have this storage available. Further pages showed the architectural renderings of the garage, the right sided and rear elevation, some computer-generated images of the garage and then the photos. He stated that the first photo was taken to show the existing metal garage and the slight list to the right. The fence, shown on the site plan is the fence which is adjacent. Everyone thought the fence was the property line but it was not although the garage was in close proximity. The fence is actually plumb, the garage is not. The second photograph shows the entirety of the Mountjoy's back yard where they could see the garage in the right hand corner. He also pointed out the steep elevation change at the rear of the property. Hopefully this was seen at the site visit.

Attorney Pelech noted he was shocked when Mr. Mountjoy came in and said they wanted to put the garage 4 feet from the rear property line. He had asked what the neighbors thought and Mr.

Mountjoy indicated the neighbors are 15 feet above them. There is a steep bank that goes up the hill to the property which fronts on Willard Avenue. He drove along Willard Avenue and tried to see the Mountjoy's garage and the peak of the roof is barely visible from Willard Avenue and the property behind them and those abutters have signed the letter of support. He described additional photographs with a close up of the garage and the fence and the steep grade change behind the garage. This garage as it presently sits is about 8 feet off the rear property line. What they would like to do is to move it back to 4 feet which would require a retaining wall and removal of the large tree. The final photo is an aerial photograph of the Mountjoy property which has the little orange balloon on it. In that photo, the purpose is to show you the character of the neighborhood. These are very, very small lots. Although it is shown on the tax map as 5,400 sq. ft., Alex Ross who is doing the survey has come up with 5,338 sq. ft. You can see from the tax map and the photo that this is a relatively densely built up area, that everybody has garages that are at or near the property line, usually at the back corner of the property on one side or the other. This shows the narrowness and the smallness of the Mountjoy lot. It does show that green area depicted in one of the site plans and does show the existing metal garage. Also, he noted from the back, the neighbor on Willard Avenue has a huge row of arbor vitae which run in sort of a semi-circular fashion along the back of his property.

Turning to the criteria, Attorney Pelech thought that granting the request would not be contrary spirit and intent of the Ordinance, nor would it be contrary to the public interest. Granting this variance would not substantially affect the character of the neighborhood and secondly, it would not cause or threaten public health, safety and welfare. This is the test that was promulgated by the Supreme Court in the Malachy v. Glen case. He stated that a well-constructed architectural structure was not going to diminish surrounding property values but would improve them. It will be much more attractive than the metal garage that is there and also backed up by the fact that all the direct abutters support the application. Attorney Pelech believed that substantial justice would be done if the variance would be granted. The hardship on the Mountjoys is certainly not outweighed by some benefit to the general public in denying the variance. Right now they have a substantial hardship in that they cannot utilize the garage because of fear of its collapse and secondly, there is no benefit to the general public by denying this variance. Turning to the hardship argument, this is a 5,338 sq. ft. lot. It's only 49 feet wide. That, in and of itself, creates problems. It's 126 feet deep on one side and 108 feet deep on the other. It's not out of character of the neighborhood, however given the fact that this dramatic grade change at the rear of the property, he thought there are special conditions which allows the Board to consider letting the garage move back against that steep banking, because, number one, the neighbors don't mind and number two, because of the grade change the garage is actually not visible or does not impose upon the rear yard of the neighbors. Were it a flat lot on the same plain as the property behind it, then a rear yard setback would be much more important, but where the garage is down below, he thought it does create some special conditions which allows the Board to grant the variance.

Mr. LeMay stated that one thing that struck him about this is that the footprint of the garage is reasonable, but the dormers and the development on the second floor seems to be enormous for the lot. That was his impression of the design. Attorney Pelech stated the reason they are putting the second story is for storage. The house is not that big, even though he had made a mistake on the map. It's 660 sq. ft. on the first floor and 660 sq. ft. on the second. They do have children, they don't have storage and they cannot adequately use their basement. They want to use the area

above the garage for storage. They would agree if the Board could put a stipulation that it would be used for nothing but obviously storage. It would not be any office or living space.

Ms. Eaton asked confirmation that the lot size is 5,300 sq. ft. Attorney Pelech confirmed that Alex Ross indicated that on his survey and pointed it out to her. She then asked why on the notes it has an area of 5,424. Attorney Pelech said that's what is on the tax map. If you look at the small map (third page) where it says lot size as 5,424, there he has it at 5,338 sq. ft., that's where he got 5,338. Ms. Eaton's other question is that the variance is for a 13.5 foot setback, but the plan notes it's a 7' setback. Attorney Pelech noted that was incorrect. Mr. Feldman interjected that the the side and rear setback for an accessory structure is under Section 10.572 from which he read that "...an accessory building or structure shall be located no closer to a side or rear lot line than 75% of the height of the structure or 10 feet, whichever figure is greater." So 75% of the height of the proposed structure is 13.5'. Mr. Grasso followed up with height of the proposed structure is 23.5? Mr. Feldman indicated it's measured to the midpoint and their information is to the peak. Chairman LeBlanc asked which option were they looking for. Attorney Pelech indicated Option A

Mr. Jousse asked why not rebuild a garage on the existing footprint? Attorney Pelech stated the reason they would like the garage to be one foot wider and 2 feet deeper is to fit a car in there and still have some area in the footprint. They still have to have stairs to go up to the second floor. The first floor plan of the garage depicts that. There are certain things that can't be stored like the lawnmower or the snow blower.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. LeMay made a motion to approve as presented and advertised. Mr. Grasso seconded.

Mr. LeMay's first impression of this particular petition was that this was somewhat of an over intensification. But in point of fact, the footprint is not substantially larger and if the second floor is just used for storage, he supposed it could be persuaded that there is no particular public interest in preventing this from going forward. He doesn't believe it will affect the character of the neighborhood. There are other similar garages. With respect to diminishing the value, there are all the abutters in agreement that this is a great thing to do and presumably if they felt it was going to depress the property values they had the opportunity to say so. He thought in terms of hardship, the lot being small is one consideration, but the persuasive one for him was the topography where it rises up in the back and is well isolated from the abutter behind. On either side of this property there are not affected neighbors directly in the area of the garage. He thought substantial justice would be done in allowing the owner to make this particular improvement. Chairman LeBlanc wanted to know if Mr. LeMay would be interested in the stipulation that this garage be only for storage. Mr. LeMay indicated absolutely.

Mr. Grasso agreed with the comments of Mr. LeMay. He added that this is odd shape and the garage really isn't parallel with any of the property lines. Also, as Mr. LeMay alluded to, the back property line has quite a rise in elevation to the abutter on Willard Ave. He agreed to the stipulation.

Ms. Eaton stated she would not be supporting the motion because she cannot agree with the dormers on the storage space, especially with the 3-window one on the back side overlooking the neighbor's property.

The motion to grant the petition as presented and advertised for Option A with the stipulation that the garage be only used for storage was voted on and failed by a vote of 3 to 4, with Ms. Eaton and Messrs. Durbin, Parrott and Jousse voting against the motion.

The Chairman asked if there was any other business to come before the Board.

Mr. Grasso asked for clarification on the last case where it said 75% of the height, could that be reworded that it is at the midpoint? He said he was getting that confused in his calculations because he was using the height to the peak. Mr. Feldman asked if he meant rewording the Ordinance. There was some discussion on that it was figured within the dimensional standards, the pitch of the roof, how that is calculated, etc., among the members. Mr. Feldman stated that was the way it was worded in the ordinance, so the wording would need to be modified.

III. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

Patty Coughlin, Acting Secretary