MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m. **June 28, 2011, Reconvened From June 21, 2011**

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrottt, Thomas Grasso, Alain Jousse, Charles LeMay, Alternate: Robin Rousseau

EXCUSED: Derek Durbin, Carol Eaton

I. APPROVAL OF MINUTES

A) April 19, 2011

It was moved, seconded and passed by majority voice vote to accept the Minutes as presented. Messrs. Jousse and LeMay abstained as they were not present at the April meeting.

II. PUBLIC HEARINGS

8) Case # 6-8
Petitioners: Alexander C. Garside & Nicole Outsen
Property: 212 Park Street Assessor Plan 149, Lot 51
Zoning district: General Residence A
Description: To replace existing garage with a 12' x 20' garage, and to replace a two level rear deck with a 1-story, 325 s.f. addition, a 9' x 11.5' screened porch, and a 70 s.f. deck and stairs.
Request: Variance from Section 10.521 to allow a left side yard setback of 8.5' where 10' is required.
Variance from Section 10.521 to allow a right side yard setback of 4' where 10' is required.
Variance from Section 10.521 to allow building coverage of 27.4% where 25% is the maximum coverage allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney introduced herself as the architect for the project and stated that Alexander Garside, the owner, was also present. Ms. Whitney presented a signed letter of support from the two next door neighbors and the neighbor across the street. In addition, she handed out a sheet showing the location of the garage across the street.

Ms. Whitney referred to the photos in the packet, including a photograph of the existing small garage that they want to relocate, and pointed out that the photograph of the rear elevation showed the two level decks with an upper level porch that wrapped around to the right side of the photo. Ms. Whitney stated that the proposal was to replace all of that with an addition, a screened porch and a deck. She also stated that the property had a large height difference between the front and back yard and that they would be stepping the addition down to get it closer to the grade. At the top of the photo, the right side elevation gave a view from Park Street. Looking down the side there was a two-story bay and just past that was a bump-out with a roof over it that would be taken out. The proposed addition didn't extend as far out towards the side property line as the bump-out. She noted that the addition had been aligned with the existing bay.

Ms. Whitney referred to the site plan and indicated that the dash lines showed what was being removed and the shaded areas what was being added back. She stated that the existing left side setback was 7.5' and they have proposed 8.5'. She stated that, although she had put the site plan together from the tax map and field measuring and it was not an engineered plan, she felt comfortable with her measurements. Ms. Whitney stated that she had tried and been unable to match the existing coverage exactly but they would be only 2 s.f. over. She described how the addition would wrap around on the left side with the closest spot 8.5'. She pointed out the screen porch and noted that the addition was being stepped down so that fewer stairs would be required to get to the lower lot.

Ms. Whitney pointed out that the existing garage was small and in poor condition. They were proposing to increase the size to 12' x 20' and shift it three feet to make it easier to access the garage. Ms. Whitney referred to the handout and stated that the yellow with black outline showed the garage close to the property line with the new, proposed garage indicated in red. She stated that the addition would allow the owners to expand the kitchen and create a family room that would be attached and a screened porch with access to the back deck.

In response to several questions from Ms. Rousseau, Ms. Whitney stated that there were two issues with the garage. One was trying to create some yard space, and the other was to try to straighten out the driveway. They gained about 30' by moving it closer to the property line. The garage was in a similar footprint as the existing one but the expansion went towards the setback to create a straight line and open up space for the yard. She further clarified that it would be a tight single car garage. If they had made it the same size as the existing garage, it would basically be a storage space and not a garage.

Ms. Whitney responded to questions from Mr. Jousse by stating that the trees were mostly on the neighbors' property with some overlapping the property line. She further clarified that the space between the property line and the edge of the garage was pretty much dead space as far as use for the applicant. Ms. Whitney reiterated that the neighbors to either side of the applicants' property as well as the neighbor across the street had signed the letter of support. In response to a further question from Mr. Jousse, Ms. Whitney confirmed that the current lot coverage was 27.4%, with a proposal of 2 s.f. of difference, which didn't change the percentage of coverage.

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. Grasso made a motion to grant the petition as presented and advertised, which was seconded by Ms. Rousseau.

Mr. Grasso stated that the applicant was in front of the Board to replace some existing structures, including a garage, which would allow the family to have more living space. He had looked at the property over the weekend and, although the garage was going closer to the property line, he felt it would be in the best interest of the applicant to straighten the entrance to the garage. He stated that granting the variance would not be contrary to the public interest and noted that a signed letter from the abutters was submitted in favor of the variance. Mr. Grasso stated that granting the variance would be in the spirit of the Ordinance as there was plenty of reasonable space around the house and the set-back on the left side was actually a foot further away from the property line than the existing structure. Substantial justice would be done as there would be no benefit to the general public in denying the variance and the value of the surrounding properties would not be diminished by granting this variance. Mr. Grasso stated that the hardship in the property was that the lot was narrow and, given the current layout of structures on the lot, the garage had to go where it was proposed. He noted that the structure was to the back of the house and further away from the road.

Ms. Rousseau stated that Ms. Whitney had done what she could to replace a deteriorating structure and it seemed to be a reasonable replacement for which the neighbors were on board. She stated that the hardship was that there was not much that could be done to make the situation better from a garage perspective and, on the other side of the house, the neighbors would be in a better position as a result of the addition. She supported the motion as she felt the hardship and the other criteria had been met.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 6 to 0.

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9) Case # 6-9
Petitioner: Karen L. Bouffard Revoc Trust 1998, Karen L. Bouffard, Trustee
Property: 87 Richards Avenue Assessor Plan 128, Lot 8
Zoning district: General Residence A
Description: To replace existing right side porch and stairs with a 7’ x 19’ side porch and stairs to the front and rear of the porch. To add an 8’ x 11’ third floor dormer on the left side.
Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
Variance from Section 10.521 to allow a 1’± left side yard setback where 10’ is required.
Variance from Section 10.521 to allow building coverage of 32.8% where 25% is the maximum coverage allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Anne Whitney stated that she was speaking on behalf of the applicant.

Chairman Witham asked for clarification of the first page, part one, third sentence, "the existing porch will be built 6' wider" and Ms. Whitney stated it should be 6".

Ms. Whitney stated that the two neighboring abutters had signed a letter of support. She described the property as a two unit rental property on which the current owner was making improvements. She referred to the photos of the dormer and stated that the stairway, even though it was wide and fairly comfortable, dropped down as you came around the corner. Ms. Whitney stated that the plans show the location of a small shed dormer on the left side to create some headroom and that a variance was required because it was a vertical expansion of a nonconforming side setback.

Ms. Whitney referred to the photos for the porch that was to be rebuilt. It was poorly constructed and was not part of the original building. She stated that it had been redone when the structure was turned into a two-family so they could do the deck above and the stairway down to the backyard. She noted that the codes had changed so that the exterior stairway was not needed. She stated that they proposed to take the entire structure off and rebuild it as a porch with a roof so that there will not be a deck on the second floor. The proposed porch would be 6" wider to allow for a wider stairway as the main access from the driveway. The other stairway was an access from the porch to the backyard. Again referring to the photographs, Ms. Whitney indicated that the grey area showed what was being removed and noted that there would be two new sets of stairs. She stated that they were totally within the set-backs, except for the dormer, and they were reducing the square footage on the site by 24 s.f. by getting rid of the big stairway and doing the simpler stairs to the back.

In response to questions from Ms. Rousseau, Ms. Whitney confirmed that she was not increasing the setback. It remained the same. She noted that the dormer did not increase the footprint at all as it was just a vertical expansion. In response to questions from Chairman Witham, Ms. Whitney confirmed that the headroom for the stairs was currently 4' 3" and not close to code. She further stated that what she proposed was higher than needed in order to get the windows in. She indicated that, according to the plans, the dashed line designated the expansion area and it was less than 3'.

Ms. Whitney responded to Mr. LeMay's questions by explaining that the side porch construction would be a wood frame, matching the detailing of the bay next to it. The floor-to-ceiling height was tall and she would have a similar gutter and detailing, with 3' railings. She would be using existing foundation wall and it would be cantilevered off that. She stated that it would be an open porch with three posts and a small hip roof with possibly some skirting underneath.

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 to grant the petition as presented and advertised, which was seconded by Mr. LeMay.

Mr. Parrottt stated that the proposed lot coverage was actually slightly smaller than the existing structure, although still over the limit allowed. He stated that the appearance would be improved, although that was not part of the criteria. He stated that the vertical expansion by the addition of the dormer would not change the footprint of the structure. Finally, the net result of the addition would not even be apparent from the front, but would make the property more useful and livable for the applicants. He stated that the net change would be relatively small.

Mr. Parrottt stated that granting the variance would not be contrary to the public interest as he felt there would be no public interest in this project. He stated that the spirit of the Ordinance would be to make the property more useful for the property owners, which this did. In the substantial justice balance test, he felt that the private good outweighed the public interest in this case. He added that granting the variance would not diminish the value of the surrounding properties and taking off the side staircase would be a positive step. Mr. Parrottt stated that the hardship test in this case was that this was one of those narrow lots where it was hard to do much of anything. The special conditions were the size of the house on this sized lot and there was no good alternative. With the setbacks and coverage slightly improved, he felt that the net result was all positive.

Mr. LeMay stated that, for the improvements sought, the improved stairway and repairs of the outside porch, it was a fairly minimal variance and there was no another way to accomplish the objective.

Chairman Witham commented that this was the smallest dormer he had seen in a vertical expansion. He stated that the variance was minimal and would also bring the property up to code so he would support the motion.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 6 to 0.

Mr. Grasso stepped down for the following petition. Ms. Rousseau assumed a voting seat.

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10) Case # 6-10
Petitioner: Ricci Supply Company, Inc.
Property: 105 Bartlett Street Assessor Plan 164, Lot 1
Zoning district: Office Research
Description: To demolish portions of existing building and replace with new building on same footprint.
Requests: Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed in a district where it does not meet the dimensional requirements. Variance from Section 10.440, Use #8.31, Use #13.11 and Use #14.10 to allow

non-marine-related retail and wholesale sales and light industry in a district where such uses are not allowed.
Variance from Section 10.532.10 to allow a 3'± front yard setback where 70' is required.
Variance from Section 10.532.10 to allow a 4'± left side yard setback where 50' is required.
Variance from Section 10.532.10 to allow a right side yard setback of 13'± where 50' is required.
Variance from Section 10.531 to allow building coverage of 37.6%± where 30% is the maximum allowed.

Mr. Parrottt made a motion to postpone this petition to next month at the request of the petitioner, which was seconded by Mr. LeMay.

The motion to postpone the petition to the following month was passed by unanimous voice vote.

Mr. Grasso resumed his seat. Mr. Jousse stepped down for this petition.. Ms. Rousseau continued in a voting capacity.

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11) Case # 6-11
Petitioners: Stephen M. & Kathleen M. Brown
Property: 14 Alder Way Assessor Plan 142, Lot 18
Zoning district: General Residence A
Description: To allow a 1½ story garage to remain within the front yard setback.
Request: Equitable Waiver as allowed in RSA 674:33-a to allow a previously constructed 1½ story garage with a 0.7'± front yard setback where 15' is required.

Chairman Witham offered the option of postponing to next month as there were only five sitting members, noting that Mr. Brown would still need four votes for approval.

Mr. Brown stated that he would like to go forward.

SPEAKING IN FAVOR OF THE PETITION

Mr. Brown introduced himself as the owner of the property and stated that he and his wife purchased the property in June, 2010 when the house and garage were about four years old. Mr. Brown explained that they received a letter in the fall from the City Attorney who indicated that it was felt that the house had been built so that 1' was on City land. Mr. Brown noted that he had met with the City Attorney and some other people from the City to figure out where everything was. They had obtained a certified survey and it was determined that the house was not on City land, but about 8" away from City land. He stated that this solved the first problem of encroachment on Portsmouth property, but left them with the problem that about 15' of the garage was in the zoning setback.

Mr. Brown indicated that the next step was to approach the Board and request an Equitable Waiver for which, under State statute, the following four criteria must be met. The first criteria was that the problem had not been noticed until the structure had been built and he stated that the first time anyone raised the issue was approximately five years after the property had been built. When he looked at the deed, it appeared that the property line started at the street and went back. Secondly, Mr. Brown stated, this was not done out of bad faith or out of ignorance of the laws. He stated that he saw a picture of the property before the house had been built and somebody had put a fence right by the street, so the visual implication was that it was okay and people didn't realize the setback was there. The third criteria was that the existing structure would not create a public or private nuisance. Mr. Brown stated that they were on a two-house alley in a location where no one was affected. He noted that there was a commercial building on the bypass on the other side of the street which he didn't feel was much farther away from the street than his garage. Fourth, he stated that weighing what was gained by putting the property in compliance with the zoning setback versus leaving it alone was that in order to comply, they would have to tear down the garage. He stated that leaving the garage would give them the benefit of having a two car garage which fits nicely with the house. He reiterated that they were at the end of a two-house alley and even if they tore down the garage, they would still need a driveway to get to the house. He concluded that he felt there was nothing to be gained, either publicly or privately, by having to tear down the garage.

In response to questions from Mr. LeMay, Mr. Brown stated that he had not had an opportunity to look at the City files to see the initial plot plans. He further stated that when he met with Attorney Sullivan and Mr. Desfosses, there were two people from the building department and at that time he believed that all the permits were in place. Finally he stated that the deed didn't contain any information on the home, just a physical land description.

Mr. Grasso asked if the Board had the original case file with the original permit and surveyed map. He stated that it was hard to believe that a house less than five years old was built this far off. Chairman Witham stated that was probably in the building inspection file. He felt that someone used a tax map and looked at the fence that used to be there and came up with these boundaries. He felt that, five years ago, the garage would have met the setbacks or the permits wouldn't have been issued. He would suspect that when the building permit application was completed, all the requirements were met. Mr. Grasso stated that Mr. Brown was making assumptions for the previous owner that it was done in good faith. He stated that he was sure it was but didn't feel Mr. Brown could make that assumption. Chairman Witham stated that small additions didn't always get inspections.

Mr. LeMay stated that it was so flagrant a violation that no one could have done it intentionally and gotten away with it. It was so over the top it was hard to believe it didn't get picked up somewhere. Chairman Witham stated that it was his sense that the fence threw everyone off.

In response to questions from Mr. Parrottt, Mr. Brown confirmed that his realtor represented that everything was fine and there were no concerns or questions about where things were located. He further confirmed that a title search was done and nothing was picked up. He stated that he believed the garage was built at the same time as the house, but he didn't know if permits had been pulled. When Mr. Parrott stated that one of his points was that the City didn't drive around looking for problems, Mr. Brown stated that Mr. Desfosses, from the Department of Public

Works, was down in his area looking for ways to have a better snow plow system in place. He wasn't looking for a building problem; he was looking at the road situation.

Mr. Parrott stated that RSA 674.33a required that the Board find that it was an outcome of failure to inquire, obfuscation, misrepresentation and so forth. It didn't say with respect to the present owner. Mr. Parrott stated that the reason this did not ring right was that it was so recent and so blatant. They were not talking about a couple of feet. The whole garage essentially was within the setback. Mr. Brown concurred. He added that they must have had the permits because, as he had stated, two of the people at the original meeting with Attorney Sullivan and Mr. Desfosses were from the building department, along with the Planning Director.
Mr. Parrott asked if the Chief Building Inspector was there and Mr. Brown confirmed that both the Chief Building Inspector and the Assistant Chief Building Inspector were present.

Ms. Rousseau commented that they could continue the petition and pull the permits as evidence of what was going on. Chairman Witham stated that the building permit would show what was implied as the setback at the time. Ms. Rousseau suggested that the Board would feel more comfortable about the decision if they saw the permits and the applicant would have to wait for the vote. Chairman Witham stated that if the Board would like to see the permits which were a valuable piece of information, they could make a motion to table until they get the information.

Mr. Parrott agreed that getting the permits was the correct thing to do. He stated to the applicant that nothing would physically change, it wouldn't cause the applicant any problems and he made the motion to postpone the hearing until the next meeting, which was seconded by Mr. LeMay.

Chairman Witham stated that there is a motion to table and to ask the Planning Department for whatever they have beyond the building permit, at a minimum. Mr. LeMay stated that he would like to see the entire file and Ms. Rousseau stated that a memo as to their understanding would be good. Chairman Witham commented that they should request a memo from Mr. Taintor and Mr. Sullivan, someone that was present at the meeting, to clarify what was discussed, in addition to the permit.

The motion to postpone the petition to the July 19, 2011 meeting was passed by a vote of 5-0.

Mr. Jousse resumed his seat.

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12) Case # 6-12
Petitioners: Sharan R. Gross Rev. Trust, Sharan R. Gross, Trustee
Property: 201 & 235 Cate Street Assessor Plan 163, Lots 31 & 32
Zoning district: General Residence A
Description: To allow a lot line relocation that would result in a lot (Lot #31) containing two existing dwelling units with less than the required square footage per dwelling unit.
Request: Variance from Section 10.521 to allow a two-family use with less than the required lot area per dwelling unit.

SPEAKING IN FAVOR OF THE PETITION

Mr. David Gross introduced himself and Ms. Sharon Gross as owners of the property. He stated that, during estate planning, they discussed more access for 201 Cate Street, which had a lot of area but was not as usable as 235 Cate Street because the property is divided by a brook. Mr. Gross distributed pictures to the Board and further stated that he spoke with an attorney and a surveyor about taking 10' of road frontage from the #235 lot and adding it to the back of the #201 lot for snow in the winter months. He stated that he knew that easements could sometimes be troublesome and he felt that a defined lot line would be better for both properties.

Chairman Witham asked Mr. Gross to briefly describe the existing and proposed lot lines. Mr. Gross referred to the map and stated that the existing lot line for 201 Cate Street was basically where the parking lines were shown. The other driveway was used to access other spaces in the back that the tenants used further down from the big yellow duplex building. He stated that if he added 10' to the #201 lot line, it would give legal access to the back if it were sold. Otherwise, the parking spaces would block any back access for snow plowing, etc. He felt hat if the lot were defined, someone would be able to put snow back there with no problems over ownership. In response to questions from Mr. Parrott, Mr. Gross stated that there was an area to the back of #201 that cut out of #235 would give them more access to put snow back there. He further clarified that when he said the back, he meant off the left of the building.

Mr. Gross responded to questions from Mr. LeMay by clarifying that lot #235-1 & 2, the parking area between the lots, and lot #235-3 were on a common lot with common ownership and that all have adequate parking. He further stated that he did not have any intention of changing the paving. If the property was ever sold off, the driveway for the far right side of #235 would still be usable. There would be access to plow snow or for whatever use needed. The additional 10' would give access to the back section without going through the area where the cars were parked.

Ms. Rousseau commented that she was over there today and it looked like the proposed line didn't encroach on the paved drive - just cornering off the back lot. It was a simple situation since the applicant owned both lots and there was plenty of parking. She clarified that where the bold, dotted line was on the plans was just one open space right now, with parking on the other side of #235. Ms. Rousseau stated that she didn't see any problem and that it was simply an invisible boundary line and she didn't think anything would need to be done with the driveway. Finally, Ms. Rousseau asked Mr. Gross if he agreed that he didn't need to do anything to differentiate the boundary line and that even in the future, it would be just an open lot. Mr. Gross agreed with Ms. Rousseau's comments, talked about the area and further stated that in the future if someone needed to put snow down in that area, it was very tight.

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. Rousseau made a motion for discussion to grant the petition as presented and advertised, which was seconded by Mr. Parrott.

Ms. Rousseau stated that there was no issue with the first four criteria, just the fifth criteria, the hardship. She stated that it seemed to be a simple request. The property owner owned both sites and they were looking to do estate planning and reconfigure the two lots that were side-by-side and to have an area for snow removal and snow maintenance. She stated it was a simple request and a reasonable proposed use. Ms. Rousseau commented that she didn't think there was a large obstacle to approving this for hardship. The two-family lot had plenty of parking and space and the other lot with the commercial building was well situated and also had plenty of space. She stated that this was a simple variance request and she was in favor of granting.

Mr. Parrott agreed with Ms. Rosseau and stated that nothing would change on the physical lot if the change was approved. The lots were undersized to support the number of units, but those were going to be there regardless and granting a variance would make the conveyance of the properties in the future easier. The reconfigured lots were both reasonable and there was unlikely to be any development anytime soon in the back of these lots. Mr. Parrott noted that the properties were already encumbered by a sewer easement and a drainage easement. Due to the unusual location of the lots and the unusual configuration, he felt this could be granted.

Chairman Witham stated that usually when they received a request for lot area per dwelling unit, it was because someone was trying to create another dwelling unit and intensify the density. This situation already existed and the use would not be made more intense. He did not see how the character of the neighborhood would be changed or that granting the variance would be against the spirit and intent of the Ordinance.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 6 to 0.

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13) Case # 6-13
Petitioners: Thomas A. Nies Revocable Trust, Thomas A & Denise M. Nies, Trustees
Property: 419 Richards Avenue Assessor Plan 112, Lot 20
Zoning district: General Residence A
Description: To construct a 10'± x 18'4"± rear addition.
Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
Variance from Section 10.521 to allow a 6' left side yard setback where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Tom Nies introduced himself as one of the owners. He stated that they were requesting a variance for a first floor sunroom addition on the back of the house at 419 Richards Avenue. He stated that the house was a nonconforming structure on a nonconforming lot. On the left side of the house was a 6' setback where 10' is required. He stated that the reason the house was off-center on the property was for a driveway or access to the rear on the right side of the house where

there was a 17.5' setback. He proposed a sunroom addition on the back of the house to match the existing line of the current house, so there would be a 6' setback. They didn't want to extend on the right side of the house because of the driveway and the building had access to the basement on the right rear of the house. Mr. Nies added that, if they tried to extend the addition, it wouldn't really match the house and there was the potential of having to relocate access to the basement.

Ms. Rousseau commented that it didn't appear the footprint would be increased. Mr. Nies clarified that the footprint would be increased by roughly 180 s.f. The coverage of the lot would remain relatively small, under 20%. Chairman Witham asked if there was any feedback from the neighbors. Mr. Nies stated that there were emails from most of the neighbors in the packet, including the abutters on either side, the two in back and across the street.

Ms. Andrea Dailey stated that she was an abutter at 429 Richards Avenue and was in favor of the request as it would conform to the character of the neighborhood.

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 grant the petition as presented and advertised, which was seconded by Mr. Grasso.

Noting that the lot coverage was under the requirement, Mr. LeMay stated that this was straightforward, just extending the house 6' on one side. He stated that granting the variance clearly did not conflict with the explicit or implicit purpose of the Ordinance. He stated that the neighborhood characteristics would not be changed and there would be no threat to the public safety or welfare so that the variance would not be contrary to the public interest. In the justice balance test, Mr. LeMay stated that granting the variance would benefit the applicant while denial would not benefit the general public. He acknowledged that letters of support from abutters had been presented so that the value of surrounding properties would not be diminished. Mr. LeMay concluded that literal enforcement of the Ordinance would result in unnecessary hardship as there were characteristics of the lot, offset to one side, along with zoning changes that created a situation where the owners couldn't reasonably expand. This was the only way the addition could be put on the lot with, he maintained, the least impact.

Mr. Grasso agreed with Mr. LeMay and stated that the proposal was a reasonable request which would have a negative impact on no one.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 6 to 0.

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14) Case # 6-14
Petitioner: Kevin Drohan & Heather Mangold

Property: 1240 Maplewood Avenue Assessor Plan 219, Lot 29
Zoning district: Single Residence B
Description: To create a second dwelling unit by adding a second story to the existing 18'8" x 19'4" garage.
Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
Variance from Section 10.440, Use #1.20 to allow a second dwelling unit on a lot where only a single family use is allowed.
Variance from Section 10.521 to allow a lot area of 3,942 s.f. per dwelling unit where 15,000 s.f. per dwelling unit is required.
Variance from Section 10.521 to allow a right side yard setback of 2'± where 10' is required.
Variance from Section 10.521 to allow a rear yard setback of 10'± where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

Mr. Harry Durgin stated that he had been working with the owner, Mr. Drohan, to figure out a way to revamp his garage which had deteriorated over the years. They had discussed expanding the structure to make a second dwelling unit for his mother-in-law who was retiring. He stated that this was an existing nonconforming building on the lot. He had spoken with the building inspector and the planner about possibly making it into an additional living space and was told that, as long as a kitchen was not installed, they would probably be able to do it. Mr. Durgin stated they would enlarge the structure by putting in a second story, replacing two deteriorated walls. He referred to the submitted photographs which showed that the right hand side of the garage near the fence was about 2.5' lower than the side nearest the house, due to the decay of the structure. They proposed taking the roof off the existing structure and moving the front and side walls while supporting the existing second floor and rebuilding with 2' x 6' construction. Along with more details regarding the construction, Mr. Durgin submitted some proposed floor plans.

Mr. Durgin noted that the owner had done some research regarding multi-family units in a single family area. Mr. Drohan stated that, of the 60 residences in a 1500 ft. radius, 14 were multi-family dwellings and in addition there was a condo development directly across the street with 47 units. He felt that adding an in-law apartment to the existing residence would have a marginal effect, if any, on density. He stated that the hardship in question was the lot size and zoning and felt that a precedent had been set in the past that was contrary to the existing zoning.

Ms. Rousseau stated that since they were on the subject of hardship, could Mr. Drohan speak to this so they could more clearly understand the hardship situation. She read the hardship criteria set out in the statutes. Mr. Drohan responded that if they were unable to convert their house to provide for him and his wife to care for her mother in a situation where she could have independence and integrity, as many of his neighbors had done, would be a hardship.

Mr. LeMay stated that what he was describing was an in-law apartment, but what the plans showed was an apartment with a single exterior access and no egress to the house. Mr. Drohan referred to the photographs and stated that right now the garage was attached to the second floor by what he referred to as a catwalk. There was an awning and the plan was to attach the structure

on the second level so there would still be a passageway to the backyard. He further stated that they were attaching on the second level to provide egress into the unit and on the first floor. If she became unable to ascend the stairway, there would be ample space to set up a bed and there would be a kitchen and bathroom. Mr. Drohan also clarified that the access would be at the top of the stairway. He described the other end of the area as an open room, next to the master bedroom in the main house, which was currently being used as office space. The plan was to reconfigure the room to more useful space, possibly a laundry area.

Mr. Jousse commented that it was hard to make sense of the presentation and he had to turn a plan sideways to see the dimensions. He stated that he saw an exterior door on what he perceived to be the bottom floor. Mr. Drohan stated that led to the kitchen and, when Mr. Jousse stated that he thought there was not kitchen, Chairman Witham noted that they had decided they needed one. Mr. Drohan stated that there was currently an exterior door on the second floor but it was exposed to the elements. The plan was to remove the existing A-frame dormer and go full height with the hip roof. When Mr. Jousse commented that he did not see on the proposed plans a door to lead from the proposed dwelling into the main building, Mr. Durgin stated that this was a concept and the planner had advised him that if he had a concept, it would help the Board to see what they were planning on doing. He stated that it was not a final drawing and had not been submitted to the building department. He also wanted to add that Mr. Drohan had letters from all the abutters agreeing to the proposed addition.

Mr. Jousse stated that he walked the property today and the picture did not present how the property looked. Mr. Drohan stated that the photograph was what he had at the time. He stated that they filed a permit with the City to tear down the shed and they tore down the shed as part of the permit. In addition, they replaced the shed and as a result reduced the rear setback. He stated that the house was not adequately structurally supported and the shed was there as a placeholder. Mr. Drohan commented that the picture was generally an adequate look at the structure, noting that one of the architects that viewed the site said a two-car garage was typically 24’ wide although it wasn’t used as a garage.

Mr. Parrott commented that the sketch that was serving as a plot plan didn’t have any information with respect to the square footage of the existing and proposed structures or for the existing and proposed connections, so it was hard to say how much lot coverage they had or was approved. Mr. Drohan stated that the footprint would not change. Right now there was an awning in place underneath which you could pass. The plan was to enclose what was currently subject to the elements.

Further discussion regarding the maximum building coverage ensued and Mr. Drohan maintained that he filled out documentation per instructions from the planner. Mr. Parrott stated that the Board could only review what they had and they needed to know factually what the lot coverage was as it could not be determined from the sketch.

Chairman Witham commented that it was his opinion is that the lot coverage was a non issue right now as the Planning Department had not brought it before them. He stated that there were several issues brought before them and that was not one of them. He further commented that if one of the Board members wanted to add that it be checked as part of a stipulation, it could be done. Mr. Parrott stated that he wanted it noted as a concern.

Mr. Drohan stated that what he was asking for was to improve the neighborhood by restructuring the existing structure so that it was sound, visually appealing, and functional for his family. He didn't want to have to move and buy a house with an in-law apartment. He restated the history of the house and commented that he felt the variances he outlined were just.

Ms. Rousseau stated that, based on comments from the Board, there was not enough information to make the best possible decision. She suggested continuing the hearing until appropriate information could be provided as the presented intentions didn't sound exactly like what was in front of them.

Chairman Witham stated that he strongly urged the Board to move forward with the information provided. He agreed that there was missing information, but that the provided information was pertinent to the variance requests. He stated that the catwalk was not clear, but nothing about the catwalk required a variance. He maintained that, even though there was missing information with regard to other aspects, the information was there with respect to the variance requests submitted. He stated that although they have asked people to come back in the past, he felt the information provided for this application is sufficient.

Ms. Rousseau commented that she looked at each as a stand alone case and that they should have the best possible chance to provide the information needed. Chairman Witham stated that what they were asking for pertained to the catwalk and lot coverage which did not change the material facts regarding the variance requests. Ms. Rousseau responded that she was hearing existing vs. proposed and felt that if the applicant understood some of the questions better, they could come back with better design plans. Chairman Witham stated that she was free to make a motion.

Ms. Rousseau made a motion to continue the hearing to the July meeting to allow the applicant to come back with more clearly defined plans, based on questions raised tonight, for the best possible chance of getting their variance application approved. There was no second to the motion.

Mr. Parrott asked if the Planning Department had spoken about the criteria the Board had to consider and if he had had an opportunity to review them. Mr. Drohan stated that he had the criteria and understood them. He felt that the hardship was that his lot size would preclude him from bringing in his mother-in-law, when about 25% of his neighbors could and particularly when they were across the street from a condominium development.

Mr. Drohan stressed that he had obtained a letter from each of his abutting neighbors for the proposed project and although it was a concept, the variances requested relate to the use. He further stated that the building inspector and department would be responsible to ensure that the addition was built to code.

Mr. Howard Mangel of 1275 Maplewood Avenue commented that he supported the proposal and felt it would improve the neighborhood.

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

Chairman Witham mentioned that the variances from the setbacks were consistent with what was there now. He noted that the major variance was the sq. ft. per dwelling unit that was below what was required although the applicants had shown that this did exist regularly in the neighborhood.

Mr. Grasso made a motion to deny the petition as presented and advertised, which was seconded by Mr. LeMay.

Mr. Grasso stated that five criteria needed to be met to grant a variance and the hardship test had not been met. Ms. Rousseau had read the criteria including the section stating that due to special conditions of the property, it could not be reasonably used as it was zoned. Mr. Grasso stated it was zoned single family and could be used a single family. He stated that he had not heard a hardship as to why the property should have two residences on it. For that reason, he made the motion to deny.

Mr. LeMay stated that the accuracy of the plan which showed a bedroom on the second floor with a kitchen and a living area on the first floor, did not have much that would materially change the consideration for a variance . He stated he felt comfortable with moving forward with that piece of information. He stated that granting the variance would not be contrary to the public interest, which meant that it did not conflict with the explicit or implicit purpose of the Ordinance. He stated that he had heard nothing to justify that granting the variance would observe the spirit of the Ordinance. Mr. LeMay stated that he was on the fence on the criteria that granting the variance would provide substantial justice. On the next criteria dealing with no diminution in the value of surrounding properties, he thought that the abutters would probably feel that the proposal would not have a huge impact, but he was not persuaded. He noted that there were other single family homes in the neighborhood in addition to the ones that were apartments and the zoning for that area was what they had to deal with. Due to previously stated reasons, he felt that the hardship criteria were also not met.

Ms. Rousseau stated that she would be abstaining and would like additional information that was not now available as the intentions did not sound exactly like the plans in front of them.

Chairman Witham stated that he was really torn with this case. He related a similar situation on Baycliff Road which included a stipulation that the variance for a second dwelling unit would only last for the lifetime of the elderly mother. He noted that that second unit had now been removed. He stated that he would like to see someone have the ability to care for a family member but fifty years from then, it would become a rental unit. His concern was the possibility of four cars coming in and out of the driveway on a busy street. He commented that, at what point did you say the zoning required this and enough is enough. He stated that the hardship was difficult to prove in any case and had not been proven here as there were really no special conditions. It was a single family home in a single family residence district and he would support the motion to deny the petition.

Mr. LeMay stated that he was not certain if the supplemental use standards in Article 8 applied. He cited language in Section 10.812 which he felt spoke to the intent of conversions in a residential district. Noting one of the issues in that section, Chairman Witham stated that this proposal obviously would change the exterior, with the studio space above.

Ms. Rousseau commented that the case on Baycliff had very clear plans and that was why she was abstaining. She thought the applicants had the intention of a similar situation of a connected unit to the primary residence, but it was not obvious.

Mr. Parrott stated that the minimum lot area in the district was 15,000 s.f. and this lot was almost half that size. On that basis alone, he maintained, it was asking a lot to grant a variance when there was such a big discrepancy between what the City had deemed to be the minimum acceptable lot area. He stated that to double the occupancy on that lot did not observe the spirit of the Ordinance. In addition, he stated, people that lived in single family residences depended on the Board to maintain the integrity of the district, which was zoned a certain way by the City Council for a reason. He felt they would be undermining that integrity by doubling the occupancy. He allowed that sometimes there were hardships on the property, but not in this case.

Mr. Jousse stated that he also supported the motion as a variance was forever. If it was creating another dwelling within the structure of the house, he would feel differently. However, this was a separate building from the house and could turn into a rental property very easily.

The motion to deny the petition as presented and advertised was passed by a vote of 5 to 0, with Ms. Rousseau abstaining from the vote.

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15) Case # 6-15
Petitioner: Sureya M. Ennabe Rev. Liv. Trust, c/o C. N. Brown Company
Property: 800 Lafayette Road Assessor Plan 244, Lot 5
Zoning district: Gateway
Description: To construct two canopy signs.
Requests: Variance from Section 1251.2 to allow canopy signs of 43.5± s.f. and 23± s.f. where 20 s.f. is the maximum sign area allowed for each individual canopy sign.

SPEAKING IN FAVOR OF THE PETITION

Mr. Peter March from NH Signs stated, on behalf of the owner, that there was more to the variance than met the eye. He provided a history of the property, indicating that C. N. Brown over the past two years had rebuilt the Citgo station on the site. He stated that, during the permit process, the canopy was shown with stripes and the Citgo logo. At the same time, Citgo changed its brand image to a more geometric design which, he stated, raised two issues. First, the requested signage on the actual canopy, which he indicated on the display, was over the limits. He stated that the other more substantial issue was that the City had declared the geometric shapes on the canopy to be signs. As a consequence, he stated, the station that was supposed to have a Citgo image on it that looked very plain and unbranded. He stated that, if the Board looked at the square footage for the Citgo brand image, they would be looking at 726 s.f.. With just the two logos,

which he pointed out, they needed 209 s.f. where 222 s.f. was allowed. He noted that this calculation was derived from the property frontage of 148' and 93' of canopy, which, he maintained, the building department had agreed was a building in its own right, and then 70' of the building itself.

Mr. March stated that the national brand was not now being allowed. Addressing the criteria, he stated that the variance would not diminish surrounding property values. He stated that there were a number of other stations in the area that had significantly more signage. He pointed out that the Sunoco station next door had a branded building, a branded canopy and a significantly larger identification sign than their station. He stated that the Mobil station across the road had a lit canopy and theirs does not. He asserted that the Gulf Station at the bypass had a larger canopy and many other sites had significantly larger amounts of signage than this site was allowed.

Mr. March stated that Citgo was rebranding all of the stations across the nation and none of the stations from NH to Maine had the issues with the brand that they were facing here. He maintained that, with 99.99% of Citgo stations containing the brand, it would be difficult to associate that same group with this station if it did not have the brand and an unbranded look was associated with failing stations and stations with cheaper gas and less favorable service. He referenced an unbranded station down the road which had gone out of business, claiming that not allowing the variance would probably diminish property values.

Mr. March stated that granting the variance would not be contrary to the public interest. He stated that the signage would clearly identify the station and that people sought out Citgo stations for specific reasons which benefited the public. Mr. March stated that Citgo was a national brand and a hardship would result if enforcement of the Ordinance prevented the image from being implemented. He maintained that people looking for the Citgo brand were less likely to find it at a "white" station and felt that substantial justice would be to allow this station to approach parity with adjacent branded stations. Mr. March concluded that the increase in signage was a reasonable use.

Ms. Rousseau stated that the application was confusing. The request was for canopy signs, but the packet showed wall signs. Per the presentation, the canopy was around the bay area and they were looking to allow 43.5 s.f.. She asked if that was going to fit in within the structure of the canopy on one side. Mr. March indicated on the exhibit the logos they were requesting and noted that they were also looking to add the Citgo logo stripes to the canopy, which would bring the square footage up to 726 s.f. He noted that the argument had been whether or not the stripes were part of the logo. He confirmed that there were four corners to the canopy and that currently it was plain.

Chairman Witham advised that, as a Board, they could only act on what had been advertised as the variance request, which was for the two Citgo words on each side of the canopy. The Board could not act on the striping issue as it was not advertised as part of the variance. He stated that what they had before them were the 43.5± s.f. and the 23± s.f. signs. Chairman Witham noted that, if there were issues with the striping, that needed to be resolved with the Planning Department, or a separate variance request would have to be submitted for the striping. Chairman Witham stated that while he understood Mr. March's point, the Board could only deal with the two Citgo signs.

In response to questions from Mr. Jousse, Mr. March confirmed that the 43.5 s.f. was for the word Citgo and the Citgo logo to go on the long side of the canopy, while just the word Citgo would be on the northerly facing side of the canopy. He further confirmed that the signage on the pole was taken care of. Further, Mr. March stated that the service he referred to previously was to point out that many people held Citgo credit cards and that there were a number of chains that had rewards programs tied in. He stated that people sought out specific gas stations for that reason.

Mr. Grasso asked if the store was open and had Citgo lettering on the canopy and Mr. March confirmed that the store was open and they currently had the Citgo lettering on the canopy that had been approved. He further confirmed that the temporary decals would be removed and the lit Citgo logos would be added. He stated that the signs currently up were within the 20 s.f. and were permissible and that they were going above that.

Ms. Rousseau stated that regarding the hardship, did he have any statistics, sales volume wise, on the drive-by business when the national brand or logo was or was not readily available to the public. Mr. March stated that the store had only been open for a couple of days and had been closed for quite some time so there was no research available. He further stated that he was not aware of any research regarding unbranded stations, but believed that an unbranded station would attract less business than a branded one.

Mr. March responded to questions from Mr. Parrott by confirming that the identification sign, that he pointed out on the exhibit, was the main sign for the property. He further confirmed that the notation on their sheet regarding reduction of the size of the ID sign on the building was incorrect. When Mr. Parrott stated that the colors going round the perimeter of the canopy might be what was called a sign band, Mr. March stated that the interpretation of what a sign band was in relation to the Ordinance was the issue.

Citing the references to other stations, Mr. Parrott noted that the Board considered the five criteria set down by law and what others did or did not have was not one of the characteristics taken into account.

Ms. Rousseau commented that reasonable use was also a factor to be considered for hardship. She stated that a commercial property owner should be able to have reasonable use of their property and be able to advertise their business to the public, especially when talking about a national brand. She stated that a reasonable ability to advertise the space to the public was an important factor to consider as far as hardship when looking at signage for a commercial space.

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

Chairman Witham reiterated that the variance was for two signs and that they were not considering the stripes or colors at this time.

Ms. Rousseau made a motion to grant the petition as presented and advertised which was seconded for discussion by Mr. Grasso.

Ms. Rousseau stated that looking at the signage presented and claimed, when you went on the property you were not able to tell what type of gas station it was. She stated that she felt the zoning requirements for signage were the bare minimum and created a hardship for a lot of new applicants for commercial space to adhere to. She stated that the applicant deserved the opportunity to advertise their business on the canopy. Going through the variance criteria, Ms. Rousseau stated that the variance was not contrary to the public interest considering the general health, safety and welfare. She noted that, if anything, it would help the public interest to identify this commercial space as something of value to them. She stated that the spirit of the Ordinance would be observed as reasonable signage for a commercial space, a gas station and convenience store, needed to be well advertised as were other properties in the area. She stated that substantial justice would be done because there would be a benefit to the applicant and to the general public to identify this space as a national brand, especially in consideration of the applicants' position on why people frequented particular gas stations. Ms. Rousseau stated that she saw no evidence that increased signage on this property would diminish values in the neighborhood in any way. Finally, she stated that the hardship was that the property could not be reasonably used in strict compliance with the Ordinance. The Ordinance allowed a maximum 20 s.f. of sign area for each individual canopy sign. She felt this did not give any commercial property owner much to work with and it was excessively restrictive for this type of storefront property. Ms. Rousseau stated that, as a property owner, they should be able to identify their national brand against the other gas station national brands on that strip. Ms. Rousseau thanked the property owner for turning an eyesore into an attractive space and stated that the property owner should have the opportunity to succeed in this space and that the Board should grant the variance.

Mr. Grasso stated that he had seconded the motion for discussion and disagreed with Ms. Rousseau's hardship test. He stated that a good portion of the signage consisted of 48 s.f. which was about 6' from Route 1. It included the word, "Citgo" and Citgo was currently on the canopy. He stated that they were looking for something in excess of what was allowed and he felt there was currently enough signage and therefore would not support the variance for an additional amount.

Mr. Jousse stated that he also would not support the motion as the applicant was requesting three times what was allowed. He further commented that the hardship was not that the city Ordinance was unfair; it was very fair. He stated that he was sure a study was done and they determined that they could make a success of the business with the current Ordinances in place at the time. He stated that there was signage just a few feet away from Route 1 that clearly defined the type of station. Mr. Jousse concluded that the city Ordinance was the maximum allowed and what they would have to live with.

Mr. Parrott stated that the new sign on the pole was quite close to Route 1. He stated that he drove by every day and you didn't have to get right up to read Citgo on the canopy, which was bright blue and jumped out on the white background, clearly visible from both directions. He maintained that if you were specifically looking for a Citgo station it was clear there was a Citgo station there. Mr. Parrott stated that, for those reasons, he would not be supporting the motion.

Chairman Witham commented that he supported the motion. He felt the request was reasonable. There was one request for 23 s.f. where 20 s.f. was required and one for 43.5 s.f. with over 20 s.f. of that due to the triangle. He stated that looking at 125 linear feet of canopy with 10 letters, 28" high did not go against the spirit of the Ordinance nor did it alter the character of the neighborhood.

The motion to grant the petition, in a tie vote of 3 to 3, failed to reach the 4 votes necessary to grant a variance. Messrs. Grasso, Jousse and Parrott voted against the motion.

V. OTHER BUSINESS

No other business was presented.

VI. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:20 p.m.

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk