

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
PORTSMOUTH, NEW HAMPSHIRE  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**April 29, 2014, Reconvened  
from April 22, 2014**

**MEMBERS PRESENT:** Vice-Chairman Arthur Parrott (acting Chair); Susan Chamberlin; Charles LeMay; Christopher Mulligan; David Rheaume; Alternate: Patrick Moretti

**MEMBERS EXCUSED:** Chairman David Witham and Derek Durbin

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In the absence of Chairman Witham, Vice-Chair Parrott opened the meeting and announced requests for postponement of hearings by the applicants for 36 Artwill Avenue and 80 Hanover Street due to a short board.

*Mr. Mulligan moved to approve the postponements to the next meeting in May. Mr. LeMay seconded and all were in favor.*

Vice-Chair Parrott noted that interested parties should call the Planning Department to inquire on the status of applications if postponements were requested.

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**I. APPROVAL OF MINUTES**

C) October 15, 2013 (Postponed from April 22, 2014)

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes with corrections.*

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**II. PUBLIC HEARINGS – NEW BUSINESS**

7) Case # 4-7

Petitioner: Kevin James Lilakos

Property: 36 Artwill Avenue

Assessor Plan 229, Lot 4

Zoning District: Single Residence B

Description: Allow a second dwelling unit above a garage.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440, Use #1.20 to allow a second dwelling unit on a lot where only one single family dwelling is permitted.
2. A Variance from Section 10.513 to allow more than one freestanding dwelling unit on a lot.
3. A Variance from Section 10.521 to allow a lot area of 0.3± acres per dwelling unit where one acre per dwelling unit is required.

*Vice-Chair Parrott noted that a vote had already been taken to postpone this hearing to the next meeting in May.*

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8) Case # 4-8

Petitioners: William Marconi Revocable Trust 94 and Eva Marconi Revocable Trust 94, owners, William and Michelle Marconi, applicants

Property: 529 New Castle Avenue

Assessor Plan 205, Lot 4

Zoning District: Single Residence A

Description: Demolish and reconstruct one of two single-family residences on a lot.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.1513 to allow a second single-family residence on a lot.
3. Variances from Section 10.521 to allow building coverage of 10.5%± where 10% is the maximum allowed and a lot area of 0.6± acres per dwelling unit where one acre per dwelling unit is required.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernie Pelech came before the Board on behalf of the property owners. Attorney Pelech said the applicants were intending to acquire a portion of the property from their father and mother’s estate. He said the two structures on the property met all the setback requirements, but the applicants planned on living in one of the structures while demolishing the other and replacing it with a new home in the same footprint. Attorney Pelech described the details of the variance requests and said the applicants were requesting a variance because the Ordinance had changed since the houses were built over fifty years ago and two dwelling units were no longer allowed on a single lot.

Attorney Pelech reviewed the criteria for granting the variances noting that granting the variances would not violate the spirit and intent of the Ordinance and the public interest would be benefited. He said the public health, safety and welfare would not be threatened and granting the variances would not substantially alter the character of the neighborhood. He said there would be no intensification of what was already there, only a replacement of one of the houses. He said the request would not diminish surrounding property values because the new house would be more aesthetically pleasing than the current house and all the houses on the left side of the island were owned by the applicant’s relatives.

Attorney Pelech said the scales tipped in favor toward the applicants and there would be no benefit to the public in denying the request. He said the location of two houses on a lot an created a special condition and literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. Attorney Pelech said the residential use was reasonable, as that was the only use allowed in the district and there was no fair and substantial relationship between the general public purposes of the Ordinance and the application to this porperty.

Attorney Pelech said the intent of the Ordinance was designed to prevent construction of two dwelling lots, but it was not intended to apply to two homes that existed prior to the Ordinance.

Mr. Rheume asked if one of the houses would be a rental. Attorney Pelech confirmed that one house would be a rental and the other would be the applicants' primary residence.

Mr. Rheume asked if the applicant had considered subdividing the parcel. Attorney Pelech said they went before the Planning Board to straighten out the lines, but they could not subdivide anymore as their lot size didn't meet requirements for subdivision for their zone.

Mr. Rheume asked how they concluded the houses had been there for 50 years. Attorney Pelech said a review of tax records and personal knowledge.

Mr. Rheume noted that he asked the Planning Department to correct an error on variance #2 and Ms. Walker said it had been corrected. Mr. Rheume said he also asked the Planning Department about another case requesting a variance for a second dwelling unit where only one was allowed. Ms. Walker statee that the Planning Department felt the application would necessitate the same variance even though it was not included in the legal notice because it was in the use table for the same situation described. Mr. Rheume inquired with Vice-Chair Parrott how he felt about granting a variance that had not been advertised. Vice-Chair Parrott said he saw the email and thought the two requirements said the same thing in slightly different ways. Ms. Walker said the Planning Department did not want to misrepresent what was being done on the property in their advertisement, but they also felt the additional variance would not substantially change the intent of the legal notice. Ms. Walker said Table of Uses 1.20 referenced two principal structures on one lot, which was not allowed in this district so a variance was required, and that situation was also covered by 10.513, but both needed to be added. Vice-Chair Parrott said the two were not identical and the language was ambiguous on the first one because it implied two dwellings in one building.

Mr. Mulligan noted that the building would be demolished and rebuilt on the existing footprint, but he thought there would also be an addition. Attorney Pelech said that was correct. Mr. Mulligan how large the addition would be and Attorney Pelech said it would be 300 square feet.

Ms. Linda Macintyre of 529B New Castle Avenue said she thought what they were doing was a wonderful idea. She said she had seen other projects that were bigger that were approved and what the Marconi's were requesting seemed reasonable and should be approved.

**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. Mulligan made a motion to **grant** the petition as presented and advertised and Mr. LeMay seconded.*

Mr. Mulligan said the applicant was the current owner of the property with a non-conforming dwelling so they were seeking relief to replace it with a modern upgrade. They were also taking the opportunity to increase it slightly.

Mr. Mulligan reviewed the criteria, noting that granting the variances would not be contrary to the public interest or the spirit of the Ordinance and the essential character of the neighborhood would remain as it was. He said there were already a number of outbuildings and dwellings on the property, which would stay the same. He said the neighborhood was pretty much dominated by the family that owned most of the property on that side between the water and the highway and would not suffer any substantial change to its character.

Mr. Mulligan said substantial justice would be done by granting the variances, as a hardship would be created for the family if the petition was denied because they would be stuck with a fairly old and small second dwelling instead of a newer, more code compliant and more desirable dwelling, while the public would not benefit from the denial. He said granting the variance would not diminish the values of surrounding properties. He said they heard support from neighbors and there was no opposition. He said the property across the highway was impervious to this type of change. He said special conditions of the property were that it was surrounded by water on two sides, had an existing second dwelling that was non-conforming, and was separated from the nearest neighbors by the highway and water. He said there was no fair and substantial relationship between the purposes of the Ordinance and the application to the property. He said the purpose of the Ordinance was to prevent overcrowding of lots and to prevent excessive density. He said the use was reasonable and this lot already had a second dwelling and this would just improve the second residence.

Mr. LeMay said Mr. Mulligan's points were well covered and he had nothing further to add.

Mr. Rheume asked the maker of the motion if he agreed with the additional variance that the Planning Department recommended. Mr. Mulligan agreed and considered that part of the motion.

Mr. Rheume commented that he would support the motion, despite being somewhat reluctant to allow second dwellings on same lots. He said the Single Residence A District implied a single building with single residents, but as Mr. Mulligan said, there were exceptions that created a unique situation and hardship. Ms. Chamberlin agreed and said she did not like to see a non-conforming use expanding when there was an opportunity to reduce the non-conformity, but she would support due to the unique circumstances of this particular property.

*The motion to grant the petition with the added variance was **passed** by a vote of 6-0.*

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9) Case # 4-9

Petitioners: Jeanne L. Freeze, owner, Ilara Donarum, applicant

Property: 205 Bartlett Street

Assessor Plan 162, Lot 33

Zoning District: General Residence A

Description: Allow a part-time optometry business.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.440, Use #6.20 to allow a medical office where the use is prohibited in this district.
2. A Variance from Sections 10.1111.10 and 10.1112.30 to allow no off-street parking spaces to be provided where 2 off-street parking spaces are required.

Ms. Chamberlin recused herself from the following petition.

**SPEAKING IN FAVOR OF THE PETITION**

Dr. Ilara Donarum said the property was grandfathered as trade only and had been a business since the 1920's with two big store front windows located on the corner lending itself as a business though it was in a residential area. Dr. Donarum said she was proposing a part-time optometry business that would not negatively impact the neighborhood as the current business did not. She said she lived three houses down and wanted to protect the residential neighborhood as well by providing a positive service to the community with her business. She said she spent the last week asking abutters how they would feel about the business to see if they would be uncomfortable and submitted the signatures she collected in support.

Dr. Donarum said she did not request a parking variance, but she did pursue two to three parking spaces from the adjoining properties for the two to three appointments that would be set at a time. She said she had two other jobs and would only be operating her business there on a part-time basis.

Dr. Donarum said the request was in the spirit of the Ordinance because the commercial property was grandfathered and had been a business since the 1920's. She said it was most recently an upholstery business, and although she was proposing a change from a trade to optometry, there would be less traffic. She said she did not think her business would decrease the value of adjoining properties because there had been a business there before.

Mr. Mulligan asked if there was on street parking in front of the building on Bartlett Street. Dr. Donarum said there was on Bartlett and Clinton Streets.

Mr. Mulligan said he recalled the building having been used for retail at some point in time. Dr. Donarum said it had been a grocery store, an archery store and an upholstery store. Mr. LeMay said he understood she was proposing a low impact, part-time business, but they received a letter, which raised a concern with what the next person would do because a variance went with a property. He wondered if they could impose a restriction on hours that would make it impractical for a more intense use later if they approved the application. Dr. Donarum said it

did not make sense to restrict the hours to eight hours a week, but twenty hours a week might be acceptable.

Mr. Rheume said it was a fairly long building going back along Clinton Street and asked if her intent was only to use the front of the building on Bartlett Street. Dr. Donarum said that was correct. She said the back was a rental property with two different addresses. Mr. Rheume asked whom she was working with for additional parking spaces. Dr. Donarum said Botnay Bay Computer offered to lease her two to three parking spaces, which she would pursue if parking inhibited the variance.

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

Anna Leijon Guth of 147 Bartlett Street, four houses down near Ricci Lumber said she appreciated having businesses around to keep an eye on neighborhood when everyone was at work.

Mr. Leonard Pufal of 56 Clinton Street said Roger's Barber Shop used to be on the corner when he first moved into the neighborhood in 1974. He said Seacoast Archery came in and ran their business from 9 a.m. to 8 p.m. for close to ten years. He said the business was 300' from his house with parking on Bartlett and Clinton Street and he did not think there would be a problem with this change.

Mr. Michael Bailey of 90 Clinton Street said the nature of business would not create a lot of traffic at any one time, adding that there was more traffic from the church and other uses down the street.

Mr. Alan Brady of 123 Clinton Street said he was in favor of the part-time business, but he would be concerned with how it would impact traffic if it was sold and turned to full-time.

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

### **DECISION OF THE BOARD**

*Mr. Rheume made a motion to **grant** the petition as presented and advertised with the stipulation that regular office hours for the business be limited to 20 hours per week. Mr. LeMay seconded.*

Mr. Rheume said business-type functions had been on the property for many years, as had many other in General Residence A District. He said the majority of other properties were in full-compliance being single homes with single families and a few minor rental units. He said this corridor of Bartlett Street connected two other districts, the Office-Research District and the General Business District by the traffic circle. He said this would be an allowed use in either of those districts. He said the few businesses that were in the two block residential corridor that connected them had existed for some time and there was some uniqueness that lended itself to granting the variance. He said he was not a big fan of granting use variances, but there were exceptions that made it reasonable and the stipulation could reduce potential impacts. He added that the applicant could return if the nature of the business changed.

Mr. Rheume reviewed the criteria, noting that granting the variances would not be contrary to the public interest considering the overall nature of the neighborhood as the applicant made a strong case that the property had a history of similar uses. He said there were also other small businesses in this district or nearby, so the proposal was in keeping with the spirit of the Ordinance. He said the applicant lived in the neighborhood just a few doors down and had an interest in preventing the diminution in values of surrounding properties. There would be no physical changes to the structure and the use would be similar to previous uses. He said the applicant indicated that there was an open parking lot next door and there would be ample parking for clients. He said there were unique circumstances in that the business use was long standing on this property and the proposal was reasonable so there was no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. He said the main concern would be for businesses popping up in the middle of a quiet residential area, but this business presented a different set of circumstances.

Mr. LeMay added that there was a hardship due to the type of building which was intended for retail use and an optometric use would create no more impact than trade.

*The motion to grant the petition with the proposed stipulation passed by a vote of 5-0.*

Ms. Chamberlin returned to her seat.

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10) Case # 4-10

Petitioner: Rick E. Condon

Property: 141 Madison Street

Assessor Plan 145, Lot 55

Zoning District: General Residence C

Description: Construct wrap-around covered farmers porch and stairs with a 38'± x 6'10" ± front section with stairs and a 28', 3" ± x 6'10" ± left side section.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow a front yard setback of 1'± where 5' is the minimum required; a right side yard setback of 8'3"± where 10' is the minimum required; and building coverage of 47.1%± where 35% is the maximum permitted.

**SPEAKING IN FAVOR OF THE PETITION**

The applicant and property owner, Mr. Rick Condon referred to photos of his existing house, showing the front of the house facing Madison Street and the other side of the house with the driveway entrance that led to his kitchen on the north side. Mr. Condon said the proposed wrap around porch would improve accessibility to the house.

Mr. Condon said the proposal would not be contrary to the public interest because the two sided wrap around would improve the appearance and performance of the property. He said the neighbors agreed that it would soften the look of his house. He said the house was concrete and

the porch would add character with minimal encroachment and be as proportionate to the existing house as possible. He said substantial justice would be served by providing weather protection in cold months and shading the brick house from summer heat in the summer. He said it would not diminish the value of surrounding properties because the addition would add value to the home and neighboring houses. He said literal enforcement of the Ordinance would create a hardship because the existing, poured concrete stairs were non-conforming, but his contractor said they could incorporate them into the porch to reduce the stoop by one foot and minimize the setbacks.

Mr. Rheume asked what the reasons were that the landing on the Madison Street side was 4'10" and the landing on the garage side was 4'1". Mr. Condon said he sometimes used the existing space near the garage for parking when the ground was frozen in the winter and there would not be enough room if it was as large as the stairs on the Madison Street side.

Ms. Kelly Hurd-Mason of 306B Austin Street, across the street from the applicant said she was in favor of the petition because she thought it would soften the house. She said Mr. Condon was a fabulous neighbor and this would allow him to be outside and enjoy the neighborhood more.

Mr. Lee Frank of 169 Madison Street, two doors down also spoke in favor of the proposal. Mr. Frank said he thought the porch would add a good aesthetic that would improve the value 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. Mulligan made a motion to **grant** the petition as presented and advertised and Mr. Moretti seconded the motion.*

Mr. Mulligan said it appeared to be a lot of relief with an increase in lot coverage being requested, but other than that, the rest of the relief was not that extraordinary for a modest improvement.

Mr. Mulligan reviewed the criteria, noting that granting the variances would not be contrary to the public interest or the spirit of the Ordinance. He said the residential character of the neighborhood would not be affected one way or another with the farmer's porch, nor would there be a negative effect on the health, safety or welfare of the neighborhood. He said substantial justice would be done and there would be no benefit to the public if they were to slavishly protect the setback while there would be a loss to applicant from enjoying his property. He said it was a tall house that covered most of the lot with no exterior protection from the elements. He said the applicant was requesting setbacks for lot coverage, but he did not see any negative effects from intensification. He said the values of surrounding properties would not be diminished. He said the neighbors in direct view in the abutting apartment



complex would not be negatively affected and all the neighbors who spoke were in favor of the proposal.

Mr. Mulligan stated that literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because the property already violated setbacks on two sides and he would even be in favor of wrapping the porch around to Austin Street because it made sense. He said the special conditions were the size of the house relative to the lot, which was configured in such a way to leave nowhere else to go. He said there was no fair and substantial relationship between the purposes of the setback and lot coverage requirement and their application to the property. He said the applicant could not do much with his front yard as it existed, but the proposal would convert it into useful space, making it a reasonable use.

Mr. Moretti agreed with Mr. Mulligan and said he had nothing further to add.

*The motion passed by a vote of 6-0.*

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11) Case # 4-11

Petitioner: Nicholas E. Strong

Property: 413 Bartlett Street

Assessor Plan 161, Lot 21

Zoning District: General Residence A

Description: Construct rear dormers, second floor deck and stairs.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow a left side yard setback of 4'± where 10' is the minimum required; and building coverage of 25.8%± where 25% is the maximum allowed.

**SPEAKING IN FAVOR OF THE PETITION**

Contractor, Mr. Derek Crawford, representing the owners, said they were proposing to add third floor dormers to increase their floor space and a deck to the rear side for a second egress. Mr. Crawford said the property was already non-conforming and there was a hardship for increased living space in the home. He said the additions would be aesthetically pleasing and in keeping with the spirit and style of the existing home. He said the proposal would increase the value of the applicant's home and surrounding properties and would not negatively affect the public.

Vice-Chair Parrott asked if they were planning to add front and rear shed type dormers and Mr. Crawford said they were. Vice-Chair Parrott asked if there were dormers on the house now and Mr. Crawford said there were not. Vice-Chair Parrott asked if the roof ridge would be any higher than it was and Mr. Crawford said they would be keeping the same ridge.

Mr. Rheume asked for validation that there would be no setback on the Bartlett Street side. Mr. Crawford said there was 8' to the sidewalk, but the tax maps indicated that the property line went through the house by 2 feet.

Mr. Rheume asked how far the dormer went up on the Bartlett Street side and Mr. Crawford said it was 2 feet. Mr. Rheume said there was no mention of a front setback requirement, but the requirement for General Residence A was 15' and asked Ms. Walker if a front setback would be necessary for the new construction. Ms. Walker agreed that it should be added because the left side was also included in the variance request.

Ms. Chamberlin inquired why the plans referred to Phase I and Phase II and Mr. Crawford said they were planning to add the deck later in the summer or early fall.

Mr. Rheume asked why they were adding such substantial dormers that nearly ran the full length of the house. He asked what it was in the house that was not working for the applicants to merit such a large expansion. Mr. Crawford said the applicant used the third floor for bedrooms and needed extra space there and they also used the second floor for a kitchen and living room.

Mr. Rheume asked what the square footage of the current living space was and the owner, Mr. Nicholas Strong, said he thought it was 867 square feet, and it would increase it to 1,200 square feet. He said they wanted to add a second bathroom on the third floor.

### **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. Chamberlin made a motion to **grant** the petition as presented and advertised and Mr. Moretti seconded.*

Ms. Chamberlin said the proposal was not changing the essential character of the property. She reviewed the criteria, noting that granting the variances would not be contrary to the public interest because adding dormers would increase the living area, but would not change the residential character of the neighborhood and thereby observed the spirit of the Ordinance. She said it would make better use of the space they had and substantial justice would be done.

Ms. Chamberlin said there was no indication that the values of surrounding properties would be diminished. She said the non-conforming building created a special condition due to the size of the house and lot and it was not unusual for a family to want to increase the size of their home. She said there was no real benefit to the public in denying the variances.

Mr. Moretti agreed and said it was a modest upgrade that was utilizing the current footprint and there would be no diminution to neighborhood property values.

Mr. Rheaume said he was concerned with the size of the shed dormers. He said he did not see dormers of that size in the neighborhood and was concerned that they would diminish the air and light to the surrounding properties. He said he was not convinced that they needed to be that big and thought they could be redesigned.

*The motion passed by a vote of 5-1 with Mr. Rheaume opposing.*

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12) Case # 4-12

Petitioner: Auger Family Irrevocable Trust, Jon C. Auger, Trustee

Property: Taft Road (number not yet assigned)

Assessor Plan 251, Lot 56

Zoning District: Single Residence B

Description: Construct single-family home with garage.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Variances from Section 10.521 to allow the following:

- a) Lot area, and lot area per dwelling unit, of 14,425± s.f. where 15,000 s.f. is required.
- b) Continuous street frontage of 90'± where 100' is the minimum required.

Vice-Chair Parrott announced that he and Mr. Mulligan would recuse themselves and informed the applicant that they would need four votes for approval, which would be the entire remaining board. Attorney Albert Hansen said they would go forward. Vice-Chair Parrott turned the gavel over to Mr. LeMay.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Albert Hansen appeared before the Board with Mr. Dave Lemieux of D. R. Lemieux and the present property owner, Mr. Gary Auger.

Attorney Hansen said the lot was barely non-conforming with 90' street frontage where 100' was required, and 14,425 square feet of lot area where 15,000 was required. He said the dwelling footprint would be in the 20% building coverage requirement with a height no greater than 35', meeting all applicable setback, height and lot coverage requirements.

Attorney Hansen reviewed the criteria, noting that granting the request would not be contrary to the spirit of the Ordinance or contrary to the public interest. It would not alter the character of the neighborhood or threaten the health, safety or welfare of the general public. He pointed out that there were a number of houses that were non-conforming in terms of the street footage and were on smaller lots. He added that they submitted a plan in good faith representing a tastefully designed and aesthetically pleasing home.

Attorney Hansen said substantial justice would be done because the lot had been taxed as buildable since 1950's, was barely non-conforming and many surrounding properties suffered from the same deficiencies. He said the values of surrounding properties would not be adversely affected and would actually benefit from the tastefully designed structure.

Attorney Hansen said the special conditions were that the lot was only slightly non-conforming, but the Elwyn Park subdivision was created in 1950's with similar surrounding lots. The use would be consistent with the adjacent and abutting properties and to deny the variances would create a hardship, preventing the enjoyment and use of the property. He said there would be no fair and substantial relationship between the general public and the purposes of the Ordinance as applied to the property because it had been a lot of record for over 60 years and it was only slightly non-conforming as far as lot size and street frontage. He said there was no other use of the property in the SRB zone that would not require the same relief and none that would be more in keeping with the existing neighborhood.

Attorney Hansen said they were aware that one abutter raised an objection to the variance. She said an email was sent by Mr. Ed Fournier on behalf of Ms. Catherine Fournier of 60 Wilson Road regarding a fear that the new house would increase storm water runoff onto adjacent property, but the tax map showed that Ms. Fournier's Lot 37 was northeast of the proposed Lot 56. He said there was a slight elevation where the lot went up from the southern side of the property on the Taft Road side as well and the land to the east of the proposed lot was also slightly elevated. He said the proposed placement of the house at the lower half of the property to the front of the Taft Road side would prevent an increase in storm runoff to Ms. Fournier's property at the extreme northeast of property where there was a slight hill. He said his client also planned to place the drive at the southwestern quadrant of the property. Attorney Hansen submitted a letter from a professional engineer, Mr. Christian Smith, who walked the property and did not notice any sign of wetlands and concluded the development of a house on the lot would not have an adverse effect on abutting properties.

Attorney Hanson acknowledged that prior decisions did not set precedent, but commented that there was a hearing on December 17, 2013 for a similar variance request for the Frank Jones subdivision because they did not meet the required street frontage at 12-4 Meadow Road. He said they were asking for more relief than his client was requesting and asked the Board to take that into consideration.

Mr. Rheume asked if there was an expectation that the house would be built on a full foundation or slab. Mr. Dave Lemieux said it would be built on a full foundation.

Mr. Rheume commented that it seemed odd that the property remained undeveloped for so long and asked why. Attorney Hansen said Mr. Auger grew up at on Lot 38, north of the subject property. His father owned both, but never merged the two and used the subject property as ingress and egress from the Taft Road side.

Mr. Gary Auger said his father's desire was to leave the property in case his sons' wanted to build homes there, but they did not, and they sold the house after his father died and his mother went into a nursing home.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Mr. Jeff Levin of 50 Taft Road said he was concerned that the character of the neighborhood would be altered and the abutting property values would be diminished. He said he was also concerned for the health and safety of the public as the narrow lot that was not suited for a home. He said the corner of the Taft and Polk Street was a giant granite rock that the house

next door was built on and the ledge extended onto the Auger lot and would require blasting. He said there was a drain on the corner and water tended to pool and run onto abutting lots. He said the house would practically be in the backyard of the lot to the left owned by Ms. Terri Golter Lamontagne and Mr. Tom Lamontagne at 49 Taft Road. He said he was also concerned that some of the abutters did not receive notice.

Mr. Rheume said the property appeared lower than some of the surrounding properties and asked Mr. Levin to describe the property further. Mr. Levin said the property did run toward street, but there was a water problem at the corner because they were at the bottom of Wilson Street that ran from Lafayette Road. He said there was a drain at the corner, but it tended to pool during storm surges, though the neighbors were all vigilant in clearing the storm drains.

Mr. Rheume asked Mr. Levin if he had experienced water problems in his home at the corner of Polk and Taft Streets. Mr. Levin said he had flooding in his basement and had spent many hours lugging buckets of water out. Mr. Rheume asked how often it occurred and Mr. Levin said it occurred a handful of times in the past ten years.

Mr. Moretti commented that he did not think the installation of a foundation would change the characteristic of the property if it were pure rock. Mr. Levin said the property was narrow and close to other houses. He said the driveway was within feet of an abutting residence.

Ms. Walker said they had record that all immediate abutters were noticed though sometimes there were discrepancies in the addresses of the assessing. Mr. Levin said the neighbors in attendance said they did not receive notice. Ms. Walker recommended they call the Planning Department to see if there was an error in the address on file.

Ms. Terri Golter Lamontagne of 49 Taft Street said she did not receive notice and was only aware of the request as a result of neighbors emailing two days before. She said her deck was in the "v" in the middle of the lot and the privacy of her back yard would be ruined. She said she had sold real estate for the past thirty years and was concerned with the effect it would have on the value of their house that they were thinking of selling their house in the next few years.

Ms. Golter Lamontagne said runoff and drainage were also a big concern on the corner of Wilson and Taft Streets. She said with the houses being so close together, she was also concerned with blasting for the house set high on the hill. She said she was concerned with houses being squished into the narrow lot. She said the neighborhood was already crowded and the surrounding property values would go down.

Mr. Moretti asked how far off the lot line her home was and Ms. Lamontagne said it was 10'. Mr. Moretti said the additional 10' of the proposed house would make 20', which was typical. Ms. Lamontagne said it might be typical of other houses in other neighborhoods, but it was not typical of this one and the house placement would ruin her privacy.

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

Mr. Auger said he was not asking for a variance for setbacks so he did not agree that the houses would be squished together. He said the proposal for the house would be no more than half way back on the lot.

Mr. Dave Lemieux of D. R. Lemieux Contracting said the proposed house would be in line with the existing house to the left, the side setbacks were 10' and the front and rear setbacks were 30', within the required setbacks. He said he had a professional engineer look at the runoff situation and he did not believe it would be an issue. He said the lot was taxed as buildable, but the previous owner used it as a back driveway.

Mr. Moretti asked if he believed they would need to blast to build the home. Mr. Lemieux said he could not be positive, but they thought if they built it to the back and to the left they would be okay.

Mr. Rheume asked Mr. Lemieux to confirm that they were proposing a 30' x 45' house and Mr. Lemieux said that was correct.

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

### **DECISION OF THE BOARD**

*Mr. Rheume made a motion to **grant** the petition as presented and advertised and Ms. Chamberlin seconded.*

Mr. Rheume said they heard the concerns expressed by abutters, but at the end of the day the application was a reasonable use of the lot, recognizing that it was not exactly what the abutters wanted to see, but the applicants made a good case that the lot was buildable. He said they often found out that there was a reason a certain lot was the last to be built, but this lot had always been buildable, but held for the family's long-term plans. Their situation changed and the lot was now becoming available for sale. He said it was an oddly shaped lot, but the overall acreage was larger than many of the surrounding lots, which could be perceived as squished onto lots. He said although the overall area did not quite meet the requirements, it was only 3.5% less than what was called for. He said in regards to the street frontage of 90', it was similar to many of the others, which was a typical number when the subdivision was made in the 1950's. He said the placement of the house was logical. He said he understand the concerns expressed by the direct abutter at 49 Taft Road since their house was built close to the lot line, but the district called for a 10' setback and the applicant wasn't asking for any relief. He said the builder went on record as saying the two-story house would be approximately 30' x 45', which was a similar or smaller footprint and in keeping with others in neighborhood.

Mr. Rheume said granting the variances would not be contrary to the public interest because what the applicant was proposing was in keeping with the rest of the neighborhood and the lot was slightly larger than others in the neighborhood. He said the spirit of the Ordinance would be observed with the relatively minor changes, close to what the Ordinance was looking for, and an allowable street frontage. He said the property was purchased by the family years ago in the same time frame as others were developed, but they did not build and granting the variances would allow the owners to exercise their right to sell the lot for construction of a home so substantial justice would be done. He said some of the abutters were able to take advantage of the fact that there had not been a home there for a long time, but there was no guarantee that would be the case forever. He said there was no sense that the surrounding property values would be diminished when looking at the whole scope of neighborhood

Mr. Rheume said there was no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. He said the lot was intended as buildable, and they were reasonably close to meeting the zoning requirements even with the changes over the years. He said the public’s desire to keep an open and empty lot did not outweigh the applicant’s rights and intents for a relatively modest house in keeping with the neighborhood and the proposed use was a reasonable one.

Ms. Chamberlin concurred and said the variance requests were modest and in keeping with the neighborhood.

Mr. LeMay said the lot was typical of other lots in the area with similar acreage and dimensions. He said it was not created to be a substandard, left over lot and the objections did not correlate with the variances requested.

*The motion passed by a vote of 4-0.*

Vice-Chair Parrott and Mr. Mulligan returned to their seats and Mr. LeMay returned the gavel back to Vice-Chair Parrott.

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13) Case # 4-13

Petitioners: Jamer Realty, Inc., owner, A. J. P. Billiards, Inc., applicant

Property: 80 Hanover Street

Assessor Plan 117, Lot 2-1

Zoning Districts: Central Business B and Downtown Overlay

Description: Year-round game of chance for charity.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440 to allow a use that is not permitted.  
(over)

Vice-Chair Parrott noted that a vote had been taken to postpone this hearing to the next meeting in May.

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14) Case # 4-14

Petitioners: Joseph and Zulmira D. Almeida Revocable Trust, Joseph and Zulmira Almeida, Trustees

Property: 27 Rogers Street

Assessor Plan 116, Lot 41

Zoning District: Mixed Residential Office

Description: Construct 29’9” ± x 15’2½”±, 1½-story rear addition.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged without conforming to the requirements of the Ordinance.

2. Variances from Section 10.521 to allow a left side yard setback of 5'6" ± where 10' is the minimum required; a rear yard setback of 3'± where 15' is the minimum required; and building coverage of 44%± where 40% is the maximum permitted.

### **SPEAKING ON BEHALF OF THE PETITION**

Mr. Joseph Almeida of 33 Blossom Street appeared before the Board on behalf of his parents who lived at 27 Rogers Street. Mr. Almeida clarified that the intent of the application was also to remove a shed on the upper left side of the lot.

Mr. Almeida stated that his parents purchased the house 16 years ago and had lived there on and off, but were moving back to be close to their family for support and care and they wanted to make changes to meet ADA requirements. He said it was the smallest house on the street. He said they could build within the setback, but they felt it would be uncharacteristic of the street where all the houses on Rogers Street, other than offices, were to one side of their lots, other than offices. He said the neighborhood existed before the Zoning Ordinance and felt any other plan would create unnecessary crowding on the right side of the property.

Mr. Almeida said the house was the smallest on the street with the least amount of coverage compared to surrounding buildings such as the Portsmouth Housing Authority, which had a large impact. He said there was a large amount of pavement and very few trees or gardens on Rogers Street. He said the intent was to stay to the left of the lot in order to keep a large and continuous garden space on the site. He said the addition was intended for someone that might be confined for large amounts of time and unable to go to the second floor. He said there was a kitchen, dining and living room, but no bedroom or bath on the first floor. He said the house had a historically complete interior with original wallpaper and it would be a shame to take that apart for a first floor bath and bedroom

Mr. Almeida reviewed the criteria, noting that the variances would not be contrary to the public interest. He said the houses on Rogers Street were all oriented to one side and crowding would occur if they had to build in the center of the lot, which would also interrupt the continuous yard, garden and sunlight. He said the Portsmouth Housing structure loomed over the lot and they wanted to extend the addition to the back and create a special garden for privacy. He said the spirit of the Ordinance would be observed and the character of the neighborhood would not be altered, adding that all parking requirements would be met and no change of use was being proposed. Mr. Almeida said the location of the addition and requested coverage was in keeping with the character of the neighborhood and substantial justice would be done. He said the addition would allow two senior citizens to live within a four to five minute walk to their families. Mr. Almeida said the significant financial investment to the home would not diminish the values of surrounding properties. He said the surrounding properties were comprised of multi and single-family homes, the Portsmouth Housing Authority, law offices, and the Portsmouth Middle School. He said literal enforcement of the Ordinance would result in unnecessary hardship to the senior citizen owners with a physical disability.

Mr. LeMay asked several questions regarding access to and from the original building and Mr. Almeida said the small deck would become an entrance up three risers. Mr. LeMay said his



concern was in regards to the ease with which the addition could become a separate living unit. Mr. Almeida said that was not the intent and he would entertain stipulations for approval.

Ms. Chamberlin asked if they could meet the variances if they moved the building, but he felt it was not aesthetically preferable. Mr. Almeida said that was correct. Ms. Chamberlin asked if the same was true for building coverage and Mr. Almeida said the building coverage would need to be smaller. Mr. Almeida said his proposal was based on trying to get interior space because his parents would be confined, but they could pull it in a small amount from the back.

Mr. Rheume asked if the structure closest to the property line on 19 Roger Street was a garage and Mr. Almeida said it was. Mr. Rheume commented that it appeared on the aerial photos that many of the abutting homes on Rogers Street had large additions. Mr. Almeida agreed, but none of them went all the way to rear lot line and some expanded back more than others. He said he lived across the street for years, his sister lived there now, and everyone got along and they did not want to create any issue. He said they felt this was the most reasonable place to create an addition and they would change their plans to accommodate the comments if they heard anything.

Mr. Mulligan asked if there was an elevation change from the parking lot to the back yard of the property. Mr. Almeida said it was almost a 30" step up. He said the quality of the space at the back of the lot near the Portsmouth Housing Authority building had created some challenges over the past years, and they wanted to avoid a dark shaded garden that could be a stage for issues.

Mr. Paul Elkins of 35 Rogers Street said he was an abutter to the right of the property and he knew Mr. Almeida and the family quite well for 25 years. He said his house was a 200-year-old Federal House and the rear "L" was made of brick. He said he thought Mr. Almeida's design was reasonable and good people would make a nice building, but he was concerned with the non-conforming proposal and excavation that was so close to an old brick building.

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

## **DECISION OF THE BOARD**

*Mr. LeMay made a motion to **grant** the petition as presented and advertised with the following stipulation that there would be no kitchen in the addition and that the existing shed on the property would be removed as requested. Ms. Chamberlin seconded.*

Mr. LeMay said he could sympathize with the desire to build to the back instead of along the side of the lot because it was more practical in this situation.

Mr. LeMay reviewed the criteria, noting that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance by allowing the structure to remain a single family home. He said it would not change the nature of the neighborhood as shown by several abutting properties that also had expansions. He said substantial justice would be done as the applicant could use the property in a reasonable way and the stipulations would restrict future misuse of the property. He said the values of surrounding properties would not be

diminished. He said the size, shape and age of the property, along with its location next to the Portsmouth Housing Authority created a hardship.

Ms. Chamberlin agreed and noted that it was a tight neighborhood and building toward the back made sense.

Vice-Chair Parrott said he might have had a problem if the back yard was not a parking lot that was likely to remain. He said the fact that other houses on street had expanded to the back of their lots also warranted approval of the exception.

*The motion to grant the petition with the proposed stipulation **passed** by a vote of 6-0.*

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### **III. ADJOURNMENT**

*It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:27 p.m.*

Respectfully submitted,

Jane K. Kendall  
Acting Secretary

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
PORTSMOUTH, NEW HAMPSHIRE  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**April 29, 2014, Reconvened  
from April 22, 2014**

**MEMBERS PRESENT:** Vice-Chairman Arthur Parrott (acting Chair); Susan Chamberlin; Charles LeMay; Christopher Mulligan; David Rheaume; Alternate: Patrick Moretti

**MEMBERS EXCUSED:** Chairman David Witham and Derek Durbin

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In the absence of Chairman Witham, Vice-Chair Parrott opened the meeting and announced requests for postponement of hearings by the applicants for 36 Artwill Avenue and 80 Hanover Street due to a short board.

*Mr. Mulligan moved to approve the postponements to the next meeting in May. Mr. LeMay seconded and all were in favor.*

Vice-Chair Parrott noted that interested parties should call the Planning Department to inquire on the status of applications if postponements were requested.

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**I. APPROVAL OF MINUTES**

C) October 15, 2013 (Postponed from April 22, 2014)

*It was moved, seconded and **passed** by unanimous voice vote to approve the Minutes with corrections.*

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**II. PUBLIC HEARINGS – NEW BUSINESS**

7) Case # 4-7

Petitioner: Kevin James Lilakos

Property: 36 Artwill Avenue

Assessor Plan 229, Lot 4

Zoning District: Single Residence B

Description: Allow a second dwelling unit above a garage.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440, Use #1.20 to allow a second dwelling unit on a lot where only one single family dwelling is permitted.
2. A Variance from Section 10.513 to allow more than one freestanding dwelling unit on a lot.
3. A Variance from Section 10.521 to allow a lot area of 0.3± acres per dwelling unit where one acre per dwelling unit is required.

*Vice-Chair Parrott noted that a vote had already been taken to postpone this hearing to the next meeting in May.*

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8) Case # 4-8

Petitioners: William Marconi Revocable Trust 94 and Eva Marconi Revocable Trust 94, owners, William and Michelle Marconi, applicants

Property: 529 New Castle Avenue

Assessor Plan 205, Lot 4

Zoning District: Single Residence A

Description: Demolish and reconstruct one of two single-family residences on a lot.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.1513 to allow a second single-family residence on a lot.
3. Variances from Section 10.521 to allow building coverage of 10.5%± where 10% is the maximum allowed and a lot area of 0.6± acres per dwelling unit where one acre per dwelling unit is required.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Bernie Pelech came before the Board on behalf of the property owners. Attorney Pelech said the applicants were intending to acquire a portion of the property from their father and mother’s estate. He said the two structures on the property met all the setback requirements, but the applicants planned on living in one of the structures while demolishing the other and replacing it with a new home in the same footprint. Attorney Pelech described the details of the variance requests and said the applicants were requesting a variance because the Ordinance had changed since the houses were built over fifty years ago and two dwelling units were no longer allowed on a single lot.

Attorney Pelech reviewed the criteria for granting the variances noting that granting the variances would not violate the spirit and intent of the Ordinance and the public interest would be benefited. He said the public health, safety and welfare would not be threatened and granting the variances would not substantially alter the character of the neighborhood. He said there would be no intensification of what was already there, only a replacement of one of the houses. He said the request would not diminish surrounding property values because the new house would be more aesthetically pleasing than the current house and all the houses on the left side of the island were owned by the applicant’s relatives.

Attorney Pelech said the scales tipped in favor toward the applicants and there would be no benefit to the public in denying the request. He said the location of two houses on a lot created a special condition and literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. Attorney Pelech said the residential use was reasonable, as that was the only use allowed in the district and there was no fair and substantial relationship between the general public purposes of the Ordinance and the application to this property.

Attorney Pelech said the intent of the Ordinance was designed to prevent construction of two dwelling lots, but it was not intended to apply to two homes that existed prior to the Ordinance.

Mr. Rheume asked if one of the houses would be a rental. Attorney Pelech confirmed that one house would be a rental and the other would be the applicants' primary residence.

Mr. Rheume asked if the applicant had considered subdividing the parcel. Attorney Pelech said they went before the Planning Board to straighten out the lines, but they could not subdivide anymore as their lot size didn't meet requirements for subdivision for their zone.

Mr. Rheume asked how they concluded the houses had been there for 50 years. Attorney Pelech said a review of tax records and personal knowledge.

Mr. Rheume noted that he asked the Planning Department to correct an error on variance #2 and Ms. Walker said it had been corrected. Mr. Rheume said he also asked the Planning Department about another case requesting a variance for a second dwelling unit where only one was allowed. Ms. Walker stated that the Planning Department felt the application would necessitate the same variance even though it was not included in the legal notice because it was in the use table for the same situation described. Mr. Rheume inquired with Vice-Chair Parrott how he felt about granting a variance that had not been advertised. Vice-Chair Parrott said he saw the email and thought the two requirements said the same thing in slightly different ways. Ms. Walker said the Planning Department did not want to misrepresent what was being done on the property in their advertisement, but they also felt the additional variance would not substantially change the intent of the legal notice. Ms. Walker said Table of Uses 1.20 referenced two principal structures on one lot, which was not allowed in this district so a variance was required, and that situation was also covered by 10.513, but both needed to be added. Vice-Chair Parrott said the two were not identical and the language was ambiguous on the first one because it implied two dwellings in one building.

Mr. Mulligan noted that the building would be demolished and rebuilt on the existing footprint, but he thought there would also be an addition. Attorney Pelech said that was correct. Mr. Mulligan how large the addition would be and Attorney Pelech said it would be 300 square feet.

Ms. Linda Macintyre of 529B New Castle Avenue said she thought what they were doing was a wonderful idea. She said she had seen other projects that were bigger that were approved and what the Marconi's were requesting seemed reasonable and should be approved.

**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. Mulligan made a motion to **grant** the petition as presented and advertised and Mr. LeMay seconded.*

Mr. Mulligan said the applicant was the current owner of the property with a non-conforming dwelling so they were seeking relief to replace it with a modern upgrade. They were also taking the opportunity to increase it slightly.

Mr. Mulligan reviewed the criteria, noting that granting the variances would not be contrary to the public interest or the spirit of the Ordinance and the essential character of the neighborhood would remain as it was. He said there were already a number of outbuildings and dwellings on the property, which would stay the same. He said the neighborhood was pretty much dominated by the family that owned most of the property on that side between the water and the highway and would not suffer any substantial change to its character.

Mr. Mulligan said substantial justice would be done by granting the variances, as a hardship would be created for the family if the petition was denied because they would be stuck with a fairly old and small second dwelling instead of a newer, more code compliant and more desirable dwelling, while the public would not benefit from the denial. He said granting the variance would not diminish the values of surrounding properties. He said they heard support from neighbors and there was no opposition. He said the property across the highway was impervious to this type of change. He said special conditions of the property were that it was surrounded by water on two sides, had an existing second dwelling that was non-conforming, and was separated from the nearest neighbors by the highway and water. He said there was no fair and substantial relationship between the purposes of the Ordinance and the application to the property. He said the purpose of the Ordinance was to prevent overcrowding of lots and to prevent excessive density. He said the use was reasonable and this lot already had a second dwelling and this would just improve the second residence.

Mr. LeMay said Mr. Mulligan's points were well covered and he had nothing further to add.

Mr. Rheume asked the maker of the motion if he agreed with the additional variance that the Planning Department recommended. Mr. Mulligan agreed and considered that part of the motion.

Mr. Rheume commented that he would support the motion, despite being somewhat reluctant to allow second dwellings on same lots. He said the Single Residence A District implied a single building with single residents, but as Mr. Mulligan said, there were exceptions that created a unique situation and hardship. Ms. Chamberlin agreed and said she did not like to see a non-conforming use expanding when there was an opportunity to reduce the non-conformity, but she would support due to the unique circumstances of this particular property.

*The motion to grant the petition with the added variance was **passed** by a vote of 6-0.*

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9) Case # 4-9

Petitioners: Jeanne L. Freeze, owner, Ilara Donarum, applicant

Property: 205 Bartlett Street

Assessor Plan 162, Lot 33

Zoning District: General Residence A

Description: Allow a part-time optometry business.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.440, Use #6.20 to allow a medical office where the use is prohibited in this district.
2. A Variance from Sections 10.1111.10 and 10.1112.30 to allow no off-street parking spaces to be provided where 2 off-street parking spaces are required.

Ms. Chamberlin recused herself from the following petition.

**SPEAKING IN FAVOR OF THE PETITION**

Dr. Ilara Donarum said the property was grandfathered as trade only and had been a business since the 1920's with two big store front windows located on the corner lending itself as a business though it was in a residential area. Dr. Donarum said she was proposing a part-time optometry business that would not negatively impact the neighborhood as the current business did not. She said she lived three houses down and wanted to protect the residential neighborhood as well by providing a positive service to the community with her business. She said she spent the last week asking abutters how they would feel about the business to see if they would be uncomfortable and submitted the signatures she collected in support.

Dr. Donarum said she did not request a parking variance, but she did pursue two to three parking spaces from the adjoining properties for the two to three appointments that would be set at a time. She said she had two other jobs and would only be operating her business there on a part-time basis.

Dr. Donarum said the request was in the spirit of the Ordinance because the commercial property was grandfathered and had been a business since the 1920's. She said it was most recently an upholstery business, and although she was proposing a change from a trade to optometry, there would be less traffic. She said she did not think her business would decrease the value of adjoining properties because there had been a business there before.

Mr. Mulligan asked if there was on street parking in front of the building on Bartlett Street. Dr. Donarum said there was on Bartlett and Clinton Streets.

Mr. Mulligan said he recalled the building having been used for retail at some point in time. Dr. Donarum said it had been a grocery store, an archery store and an upholstery store. Mr. LeMay said he understood she was proposing a low impact, part-time business, but they received a letter, which raised a concern with what the next person would do because a variance went with a property. He wondered if they could impose a restriction on hours that would make it impractical for a more intense use later if they approved the application. Dr. Donarum said it

did not make sense to restrict the hours to eight hours a week, but twenty hours a week might be acceptable.

Mr. Rheume said it was a fairly long building going back along Clinton Street and asked if her intent was only to use the front of the building on Bartlett Street. Dr. Donarum said that was correct. She said the back was a rental property with two different addresses. Mr. Rheume asked whom she was working with for additional parking spaces. Dr. Donarum said Botnay Bay Computer offered to lease her two to three parking spaces, which she would pursue if parking inhibited the variance.

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

Anna Leijon Guth of 147 Bartlett Street, four houses down near Ricci Lumber said she appreciated having businesses around to keep an eye on neighborhood when everyone was at work.

Mr. Leonard Pufal of 56 Clinton Street said Roger's Barber Shop used to be on the corner when he first moved into the neighborhood in 1974. He said Seacoast Archery came in and ran their business from 9 a.m. to 8 p.m. for close to ten years. He said the business was 300' from his house with parking on Bartlett and Clinton Street and he did not think there would be a problem with this change.

Mr. Michael Bailey of 90 Clinton Street said the nature of business would not create a lot of traffic at any one time, adding that there was more traffic from the church and other uses down the street.

Mr. Alan Brady of 123 Clinton Street said he was in favor of the part-time business, but he would be concerned with how it would impact traffic if it was sold and turned to full-time.

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

### **DECISION OF THE BOARD**

*Mr. Rheume made a motion to **grant** the petition as presented and advertised with the stipulation that regular office hours for the business be limited to 20 hours per week. Mr. LeMay seconded.*

Mr. Rheume said business-type functions had been on the property for many years, as had many other in General Residence A District. He said the majority of other properties were in full-compliance being single homes with single families and a few minor rental units. He said this corridor of Bartlett Street connected two other districts, the Office-Research District and the General Business District by the traffic circle. He said this would be an allowed use in either of those districts. He said the few businesses that were in the two block residential corridor that connected them had existed for some time and there was some uniqueness that lended itself to granting the variance. He said he was not a big fan of granting use variances, but there were exceptions that made it reasonable and the stipulation could reduce potential impacts. He added that the applicant could return if the nature of the business changed.



Mr. Rheume reviewed the criteria, noting that granting the variances would not be contrary to the public interest considering the overall nature of the neighborhood as the applicant made a strong case that the property had a history of similar uses. He said there were also other small businesses in this district or nearby, so the proposal was in keeping with the spirit of the Ordinance. He said the applicant lived in the neighborhood just a few doors down and had an interest in preventing the diminution in values of surrounding properties. There would be no physical changes to the structure and the use would be similar to previous uses. He said the applicant indicated that there was an open parking lot next door and there would be ample parking for clients. He said there were unique circumstances in that the business use was long standing on this property and the proposal was reasonable so there was no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. He said the main concern would be for businesses popping up in the middle of a quiet residential area, but this business presented a different set of circumstances.

Mr. LeMay added that there was a hardship due to the type of building which was intended for retail use and an optometric use would create no more impact than trade.

*The motion to grant the petition with the proposed stipulation passed by a vote of 5-0.*

Ms. Chamberlin returned to her seat.

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10) Case # 4-10

Petitioner: Rick E. Condon

Property: 141 Madison Street

Assessor Plan 145, Lot 55

Zoning District: General Residence C

Description: Construct wrap-around covered farmers porch and stairs with a 38'± x 6'10"± front section with stairs and a 28', 3"± x 6'10"± left side section.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow a front yard setback of 1'± where 5' is the minimum required; a right side yard setback of 8'3"± where 10' is the minimum required; and building coverage of 47.1%± where 35% is the maximum permitted.

**SPEAKING IN FAVOR OF THE PETITION**

The applicant and property owner, Mr. Rick Condon referred to photos of his existing house, showing the front of the house facing Madison Street and the other side of the house with the driveway entrance that led to his kitchen on the north side. Mr. Condon said the proposed wrap around porch would improve accessibility to the house.

Mr. Condon said the proposal would not be contrary to the public interest because the two sided wrap around would improve the appearance and performance of the property. He said the neighbors agreed that it would soften the look of his house. He said the house was concrete and

the porch would add character with minimal encroachment and be as proportionate to the existing house as possible. He said substantial justice would be served by providing weather protection in cold months and shading the brick house from summer heat in the summer. He said it would not diminish the value of surrounding properties because the addition would add value to the home and neighboring houses. He said literal enforcement of the Ordinance would create a hardship because the existing, poured concrete stairs were non-conforming, but his contractor said they could incorporate them into the porch to reduce the stoop by one foot and minimize the setbacks.

Mr. Rheume asked what the reasons were that the landing on the Madison Street side was 4'10" and the landing on the garage side was 4'1". Mr. Condon said he sometimes used the existing space near the garage for parking when the ground was frozen in the winter and there would not be enough room if it was as large as the stairs on the Madison Street side.

Ms. Kelly Hurd-Mason of 306B Austin Street, across the street from the applicant said she was in favor of the petition because she thought it would soften the house. She said Mr. Condon was a fabulous neighbor and this would allow him to be outside and enjoy the neighborhood more.

Mr. Lee Frank of 169 Madison Street, two doors down also spoke in favor of the proposal. Mr. Frank said he thought the porch would add a good aesthetic that would improve the value 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. Mulligan made a motion to **grant** the petition as presented and advertised and Mr. Moretti seconded the motion.*

Mr. Mulligan said it appeared to be a lot of relief with an increase in lot coverage being requested, but other than that, the rest of the relief was not that extraordinary for a modest improvement.

Mr. Mulligan reviewed the criteria, noting that granting the variances would not be contrary to the public interest or the spirit of the Ordinance. He said the residential character of the neighborhood would not be affected one way or another with the farmer's porch, nor would there be a negative effect on the health, safety or welfare of the neighborhood. He said substantial justice would be done and there would be no benefit to the public if they were to slavishly protect the setback while there would be a loss to applicant from enjoying his property. He said it was a tall house that covered most of the lot with no exterior protection from the elements. He said the applicant was requesting setbacks for lot coverage, but he did not see any negative effects from intensification. He said the values of surrounding properties would not be diminished. He said the neighbors in direct view in the abutting apartment

complex would not be negatively affected and all the neighbors who spoke were in favor of the proposal.

Mr. Mulligan stated that literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because the property already violated setbacks on two sides and he would even be in favor of wrapping the porch around to Austin Street because it made sense. He said the special conditions were the size of the house relative to the lot, which was configured in such a way to leave nowhere else to go. He said there was no fair and substantial relationship between the purposes of the setback and lot coverage requirement and their application to the property. He said the applicant could not do much with his front yard as it existed, but the proposal would convert it into useful space, making it a reasonable use.

Mr. Moretti agreed with Mr. Mulligan and said he had nothing further to add.

*The motion passed by a vote of 6-0.*

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11) Case # 4-11

Petitioner: Nicholas E. Strong

Property: 413 Bartlett Street

Assessor Plan 161, Lot 21

Zoning District: General Residence A

Description: Construct rear dormers, second floor deck and stairs.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow a left side yard setback of 4'± where 10' is the minimum required; and building coverage of 25.8%± where 25% is the maximum allowed.

**SPEAKING IN FAVOR OF THE PETITION**

Contractor, Mr. Derek Crawford, representing the owners, said they were proposing to add third floor dormers to increase their floor space and a deck to the rear side for a second egress. Mr. Crawford said the property was already non-conforming and there was a hardship for increased living space in the home. He said the additions would be aesthetically pleasing and in keeping with the spirit and style of the existing home. He said the proposal would increase the value of the applicant's home and surrounding properties and would not negatively affect the public.

Vice-Chair Parrott asked if they were planning to add front and rear shed type dormers and Mr. Crawford said they were. Vice-Chair Parrott asked if there were dormers on the house now and Mr. Crawford said there were not. Vice-Chair Parrott asked if the roof ridge would be any higher than it was and Mr. Crawford said they would be keeping the same ridge.

Mr. Rheume asked for validation that there would be no setback on the Bartlett Street side. Mr. Crawford said there was 8' to the sidewalk, but the tax maps indicated that the property line went through the house by 2 feet.

Mr. Rheume asked how far the dormer went up on the Bartlett Street side and Mr. Crawford said it was 2 feet. Mr. Rheume said there was no mention of a front setback requirement, but the requirement for General Residence A was 15' and asked Ms. Walker if a front setback would be necessary for the new construction. Ms. Walker agreed that it should be added because the left side was also included in the variance request.

Ms. Chamberlin inquired why the plans referred to Phase I and Phase II and Mr. Crawford said they were planning to add the deck later in the summer or early fall.

Mr. Rheume asked why they were adding such substantial dormers that nearly ran the full length of the house. He asked what it was in the house that was not working for the applicants to merit such a large expansion. Mr. Crawford said the applicant used the third floor for bedrooms and needed extra space there and they also used the second floor for a kitchen and living room.

Mr. Rheume asked what the square footage of the current living space was and the owner, Mr. Nicholas Strong, said he thought it was 867 square feet, and it would increase it to 1,200 square feet. He said they wanted to add a second bathroom on the third floor.

### **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. Chamberlin made a motion to **grant** the petition as presented and advertised and Mr. Moretti seconded.*

Ms. Chamberlin said the proposal was not changing the essential character of the property. She reviewed the criteria, noting that granting the variances would not be contrary to the public interest because adding dormers would increase the living area, but would not change the residential character of the neighborhood and thereby observed the spirit of the Ordinance. She said it would make better use of the space they had and substantial justice would be done.

Ms. Chamberlin said there was no indication that the values of surrounding properties would be diminished. She said the non-conforming building created a special condition due to the size of the house and lot and it was not unusual for a family to want to increase the size of their home. She said there was no real benefit to the public in denying the variances.

Mr. Moretti agreed and said it was a modest upgrade that was utilizing the current footprint and there would be no diminution to neighborhood property values.

Mr. Rheaume said he was concerned with the size of the shed dormers. He said he did not see dormers of that size in the neighborhood and was concerned that they would diminish the air and light to the surrounding properties. He said he was not convinced that they needed to be that big and thought they could be redesigned.

*The motion passed by a vote of 5-1 with Mr. Rheaume opposing.*

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12) Case # 4-12

Petitioner: Auger Family Irrevocable Trust, Jon C. Auger, Trustee

Property: Taft Road (number not yet assigned)

Assessor Plan 251, Lot 56

Zoning District: Single Residence B

Description: Construct single-family home with garage.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Variances from Section 10.521 to allow the following:

- a) Lot area, and lot area per dwelling unit, of 14,425± s.f. where 15,000 s.f. is required.
- b) Continuous street frontage of 90'± where 100' is the minimum required.

Vice-Chair Parrott announced that he and Mr. Mulligan would recuse themselves and informed the applicant that they would need four votes for approval, which would be the entire remaining board. Attorney Albert Hansen said they would go forward. Vice-Chair Parrott turned the gavel over to Mr. LeMay.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Albert Hansen appeared before the Board with Mr. Dave Lemieux of D. R. Lemieux and the present property owner, Mr. Gary Auger.

Attorney Hansen said the lot was barely non-conforming with 90' street frontage where 100' was required, and 14,425 square feet of lot area where 15,000 was required. He said the dwelling footprint would be in the 20% building coverage requirement with a height no greater than 35', meeting all applicable setback, height and lot coverage requirements.

Attorney Hansen reviewed the criteria, noting that granting the request would not be contrary to the spirit of the Ordinance or contrary to the public interest. It would not alter the character of the neighborhood or threaten the health, safety or welfare of the general public. He pointed out that there were a number of houses that were non-conforming in terms of the street footage and were on smaller lots. He added that they submitted a plan in good faith representing a tastefully designed and aesthetically pleasing home.

Attorney Hansen said substantial justice would be done because the lot had been taxed as buildable since 1950's, was barely non-conforming and many surrounding properties suffered from the same deficiencies. He said the values of surrounding properties would not be adversely affected and would actually benefit from the tastefully designed structure.

Attorney Hansen said the special conditions were that the lot was only slightly non-conforming, but the Elwyn Park subdivision was created in 1950's with similar surrounding lots. The use would be consistent with the adjacent and abutting properties and to deny the variances would create a hardship, preventing the enjoyment and use of the property. He said there would be no fair and substantial relationship between the general public and the purposes of the Ordinance as applied to the property because it had been a lot of record for over 60 years and it was only slightly non-conforming as far as lot size and street frontage. He said there was no other use of the property in the SRB zone that would not require the same relief and none that would be more in keeping with the existing neighborhood.

Attorney Hansen said they were aware that one abutter raised an objection to the variance. She said an email was sent by Mr. Ed Fournier on behalf of Ms. Catherine Fournier of 60 Wilson Road regarding a fear that the new house would increase storm water runoff onto adjacent property, but the tax map showed that Ms. Fournier's Lot 37 was northeast of the proposed Lot 56. He said there was a slight elevation where the lot went up from the southern side of the property on the Taft Road side as well and the land to the east of the proposed lot was also slightly elevated. He said the proposed placement of the house at the lower half of the property to the front of the Taft Road side would prevent an increase in storm runoff to Ms. Fournier's property at the extreme northeast of property where there was a slight hill. He said his client also planned to place the drive at the southwestern quadrant of the property. Attorney Hansen submitted a letter from a professional engineer, Mr. Christian Smith, who walked the property and did not notice any sign of wetlands and concluded the development of a house on the lot would not have an adverse effect on abutting properties.

Attorney Hanson acknowledged that prior decisions did not set precedent, but commented that there was a hearing on December 17, 2013 for a similar variance request for the Frank Jones subdivision because they did not meet the required street frontage at 12-4 Meadow Road. He said they were asking for more relief than his client was requesting and asked the Board to take that into consideration.

Mr. Rheume asked if there was an expectation that the house would be built on a full foundation or slab. Mr. Dave Lemieux said it would be built on a full foundation.

Mr. Rheume commented that it seemed odd that the property remained undeveloped for so long and asked why. Attorney Hansen said Mr. Auger grew up at on Lot 38, north of the subject property. His father owned both, but never merged the two and used the subject property as ingress and egress from the Taft Road side.

Mr. Gary Auger said his father's desire was to leave the property in case his sons' wanted to build homes there, but they did not, and they sold the house after his father died and his mother went into a nursing home.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Mr. Jeff Levin of 50 Taft Road said he was concerned that the character of the neighborhood would be altered and the abutting property values would be diminished. He said he was also concerned for the health and safety of the public as the narrow lot that was not suited for a home. He said the corner of the Taft and Polk Street was a giant granite rock that the house

next door was built on and the ledge extended onto the Auger lot and would require blasting. He said there was a drain on the corner and water tended to pool and run onto abutting lots. He said the house would practically be in the backyard of the lot to the left owned by Ms. Terri Golter Lamontagne and Mr. Tom Lamontagne at 49 Taft Road. He said he was also concerned that some of the abutters did not receive notice.

Mr. Rheume said the property appeared lower than some of the surrounding properties and asked Mr. Levin to describe the property further. Mr. Levin said the property did run toward street, but there was a water problem at the corner because they were at the bottom of Wilson Street that ran from Lafayette Road. He said there was a drain at the corner, but it tended to pool during storm surges, though the neighbors were all vigilant in clearing the storm drains.

Mr. Rheume asked Mr. Levin if he had experienced water problems in his home at the corner of Polk and Taft Streets. Mr. Levin said he had flooding in his basement and had spent many hours lugging buckets of water out. Mr. Rheume asked how often it occurred and Mr. Levin said it occurred a handful of times in the past ten years.

Mr. Moretti commented that he did not think the installation of a foundation would change the characteristic of the property if it were pure rock. Mr. Levin said the property was narrow and close to other houses. He said the driveway was within feet of an abutting residence.

Ms. Walker said they had record that all immediate abutters were noticed though sometimes there were discrepancies in the addresses of the assessing. Mr. Levin said the neighbors in attendance said they did not receive notice. Ms. Walker recommended they call the Planning Department to see if there was an error in the address on file.

Ms. Terri Golter Lamontagne of 49 Taft Street said she did not receive notice and was only aware of the request as a result of neighbors emailing two days before. She said her deck was in the "v" in the middle of the lot and the privacy of her back yard would be ruined. She said she had sold real estate for the past thirty years and was concerned with the effect it would have on the value of their house that they were thinking of selling their house in the next few years.

Ms. Golter Lamontagne said runoff and drainage were also a big concern on the corner of Wilson and Taft Streets. She said with the houses being so close together, she was also concerned with blasting for the house set high on the hill. She said she was concerned with houses being squished into the narrow lot. She said the neighborhood was already crowded and the surrounding property values would go down.

Mr. Moretti asked how far off the lot line her home was and Ms. Lamontagne said it was 10'. Mr. Moretti said the additional 10' of the proposed house would make 20', which was typical. Ms. Lamontagne said it might be typical of other houses in other neighborhoods, but it was not typical of this one and the house placement would ruin her privacy.

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

Mr. Auger said he was not asking for a variance for setbacks so he did not agree that the houses would be squished together. He said the proposal for the house would be no more than half way back on the lot.

Mr. Dave Lemieux of D. R. Lemieux Contracting said the proposed house would be in line with the existing house to the left, the side setbacks were 10' and the front and rear setbacks were 30', within the required setbacks. He said he had a professional engineer look at the runoff situation and he did not believe it would be an issue. He said the lot was taxed as buildable, but the previous owner used it as a back driveway.

Mr. Moretti asked if he believed they would need to blast to build the home. Mr. Lemieux said he could not be positive, but they thought if they built it to the back and to the left they would be okay.

Mr. Rheume asked Mr. Lemieux to confirm that they were proposing a 30' x 45' house and Mr. Lemieux said that was correct.

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

### **DECISION OF THE BOARD**

*Mr. Rheume made a motion to **grant** the petition as presented and advertised and Ms. Chamberlin seconded.*

Mr. Rheume said they heard the concerns expressed by abutters, but at the end of the day the application was a reasonable use of the lot, recognizing that it was not exactly what the abutters wanted to see, but the applicants made a good case that the lot was buildable. He said they often found out that there was a reason a certain lot was the last to be built, but this lot had always been buildable, but held for the family's long-term plans. Their situation changed and the lot was now becoming available for sale. He said it was an oddly shaped lot, but the overall acreage was larger than many of the surrounding lots, which could be perceived as squished onto lots. He said although the overall area did not quite meet the requirements, it was only 3.5% less than what was called for. He said in regards to the street frontage of 90', it was similar to many of the others, which was a typical number when the subdivision was made in the 1950's. He said the placement of the house was logical. He said he understand the concerns expressed by the direct abutter at 49 Taft Road since their house was built close to the lot line, but the district called for a 10' setback and the applicant wasn't asking for any relief. He said the builder went on record as saying the two-story house would be approximately 30' x 45', which was a similar or smaller footprint and in keeping with others in neighborhood.

Mr. Rheume said granting the variances would not be contrary to the public interest because what the applicant was proposing was in keeping with the rest of the neighborhood and the lot was slightly larger than others in the neighborhood. He said the spirit of the Ordinance would be observed with the relatively minor changes, close to what the Ordinance was looking for, and an allowable street frontage. He said the property was purchased by the family years ago in the same time frame as others were developed, but they did not build and granting the variances would allow the owners to exercise their right to sell the lot for construction of a home so substantial justice would be done. He said some of the abutters were able to take advantage of the fact that there had not been a home there for a long time, but there was no guarantee that would be the case forever. He said there was no sense that the surrounding property values would be diminished when looking at the whole scope of neighborhood



Mr. Rheume said there was no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. He said the lot was intended as buildable, and they were reasonably close to meeting the zoning requirements even with the changes over the years. He said the public’s desire to keep an open and empty lot did not outweigh the applicant’s rights and intents for a relatively modest house in keeping with the neighborhood and the proposed use was a reasonable one.

Ms. Chamberlin concurred and said the variance requests were modest and in keeping with the neighborhood.

Mr. LeMay said the lot was typical of other lots in the area with similar acreage and dimensions. He said it was not created to be a substandard, left over lot and the objections did not correlate with the variances requested.

*The motion passed by a vote of 4-0.*

Vice-Chair Parrott and Mr. Mulligan returned to their seats and Mr. LeMay returned the gavel back to Vice-Chair Parrott.

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13) Case # 4-13

Petitioners: Jamer Realty, Inc., owner, A. J. P. Billiards, Inc., applicant

Property: 80 Hanover Street

Assessor Plan 117, Lot 2-1

Zoning Districts: Central Business B and Downtown Overlay

Description: Year-round game of chance for charity.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440 to allow a use that is not permitted.  
(over)

Vice-Chair Parrott noted that a vote had been taken to postpone this hearing to the next meeting in May.

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14) Case # 4-14

Petitioners: Joseph and Zulmira D. Almeida Revocable Trust, Joseph and Zulmira Almeida, Trustees

Property: 27 Rogers Street

Assessor Plan 116, Lot 41

Zoning District: Mixed Residential Office

Description: Construct 29’9” ± x 15’2½”±, 1½-story rear addition.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged without conforming to the requirements of the Ordinance.

2. Variances from Section 10.521 to allow a left side yard setback of 5'6" ± where 10' is the minimum required; a rear yard setback of 3'± where 15' is the minimum required; and building coverage of 44%± where 40% is the maximum permitted.

### **SPEAKING ON BEHALF OF THE PETITION**

Mr. Joseph Almeida of 33 Blossom Street appeared before the Board on behalf of his parents who lived at 27 Rogers Street. Mr. Almeida clarified that the intent of the application was also to remove a shed on the upper left side of the lot.

Mr. Almeida stated that his parents purchased the house 16 years ago and had lived there on and off, but were moving back to be close to their family for support and care and they wanted to make changes to meet ADA requirements. He said it was the smallest house on the street. He said they could build within the setback, but they felt it would be uncharacteristic of the street where all the houses on Rogers Street, other than offices, were to one side of their lots, other than offices. He said the neighborhood existed before the Zoning Ordinance and felt any other plan would create unnecessary crowding on the right side of the property.

Mr. Almeida said the house was the smallest on the street with the least amount of coverage compared to surrounding buildings such as the Portsmouth Housing Authority, which had a large impact. He said there was a large amount of pavement and very few trees or gardens on Rogers Street. He said the intent was to stay to the left of the lot in order to keep a large and continuous garden space on the site. He said the addition was intended for someone that might be confined for large amounts of time and unable to go to the second floor. He said there was a kitchen, dining and living room, but no bedroom or bath on the first floor. He said the house had a historically complete interior with original wallpaper and it would be a shame to take that apart for a first floor bath and bedroom

Mr. Almeida reviewed the criteria, noting that the variances would not be contrary to the public interest. He said the houses on Rogers Street were all oriented to one side and crowding would occur if they had to build in the center of the lot, which would also interrupt the continuous yard, garden and sunlight. He said the Portsmouth Housing structure loomed over the lot and they wanted to extend the addition to the back and create a special garden for privacy. He said the spirit of the Ordinance would be observed and the character of the neighborhood would not be altered, adding that all parking requirements would be met and no change of use was being proposed. Mr. Almeida said the location of the addition and requested coverage was in keeping with the character of the neighborhood and substantial justice would be done. He said the addition would allow two senior citizens to live within a four to five minute walk to their families. Mr. Almeida said the significant financial investment to the home would not diminish the values of surrounding properties. He said the surrounding properties were comprised of multi and single-family homes, the Portsmouth Housing Authority, law offices, and the Portsmouth Middle School. He said literal enforcement of the Ordinance would result in unnecessary hardship to the senior citizen owners with a physical disability.

Mr. LeMay asked several questions regarding access to and from the original building and Mr. Almeida said the small deck would become an entrance up three risers. Mr. LeMay said his

concern was in regards to the ease with which the addition could become a separate living unit. Mr. Almeida said that was not the intent and he would entertain stipulations for approval.

Ms. Chamberlin asked if they could meet the variances if they moved the building, but he felt it was not aesthetically preferable. Mr. Almeida said that was correct. Ms. Chamberlin asked if the same was true for building coverage and Mr. Almeida said the building coverage would need to be smaller. Mr. Almeida said his proposal was based on trying to get interior space because his parents would be confined, but they could pull it in a small amount from the back.

Mr. Rheume asked if the structure closest to the property line on 19 Roger Street was a garage and Mr. Almeida said it was. Mr. Rheume commented that it appeared on the aerial photos that many of the abutting homes on Rogers Street had large additions. Mr. Almeida agreed, but none of them went all the way to rear lot line and some expanded back more than others. He said he lived across the street for years, his sister lived there now, and everyone got along and they did not want to create any issue. He said they felt this was the most reasonable place to create an addition and they would change their plans to accommodate the comments if they heard anything.

Mr. Mulligan asked if there was an elevation change from the parking lot to the back yard of the property. Mr. Almeida said it was almost a 30" step up. He said the quality of the space at the back of the lot near the Portsmouth Housing Authority building had created some challenges over the past years, and they wanted to avoid a dark shaded garden that could be a stage for issues.

Mr. Paul Elkins of 35 Rogers Street said he was an abutter to the right of the property and he knew Mr. Almeida and the family quite well for 25 years. He said his house was a 200-year-old Federal House and the rear "L" was made of brick. He said he thought Mr. Almeida's design was reasonable and good people would make a nice building, but he was concerned with the non-conforming proposal and excavation that was so close to an old brick building.

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

## **DECISION OF THE BOARD**

*Mr. LeMay made a motion to **grant** the petition as presented and advertised with the following stipulation that there would be no kitchen in the addition and that the existing shed on the property would be removed as requested. Ms. Chamberlin seconded.*

Mr. LeMay said he could sympathize with the desire to build to the back instead of along the side of the lot because it was more practical in this situation.

Mr. LeMay reviewed the criteria, noting that granting the variances would not be contrary to the public interest and would observe the spirit of the Ordinance by allowing the structure to remain a single family home. He said it would not change the nature of the neighborhood as shown by several abutting properties that also had expansions. He said substantial justice would be done as the applicant could use the property in a reasonable way and the stipulations would restrict future misuse of the property. He said the values of surrounding properties would not be

diminished. He said the size, shape and age of the property, along with its location next to the Portsmouth Housing Authority created a hardship.

Ms. Chamberlin agreed and noted that it was a tight neighborhood and building toward the back made sense.

Vice-Chair Parrott said he might have had a problem if the back yard was not a parking lot that was likely to remain. He said the fact that other houses on street had expanded to the back of their lots also warranted approval of the exception.

*The motion to grant the petition with the proposed stipulation **passed** by a vote of 6-0.*

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### **III. ADJOURNMENT**

*It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:27 p.m.*

Respectfully submitted,

Jane K. Kendall  
Acting Secretary