

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

**MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**October 21, 2014, To Be  
Reconvened October 28, 2014**

**MEMBERS PRESENT:** Chairman David Witham; Vice-Chairman Arthur Parrott; Derek Durbin; Charles LeMay; David Rheame; Christopher Mulligan; Jeremiah Johnson; Alternate Patrick Moretti

**MEMBERS EXCUSED:** Susan Chamberlin

**ALSO PRESENT:** Juliet Walker, Planning Department

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**I. APPROVAL OF MINUTES**

A) August 18, 2014

Mr. Rheame and Mr. Mulligan requested changes and/or clarifications to pages 2, 11, and 19. Ms. Walker advised that the recording of the meeting would be checked and any necessary changes made.

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

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**II. PUBLIC HEARINGS - NEW BUSINESS**

Chairman Witham recused himself from the following petition and Vice-Chair Parrott assumed the Chair. Mr. Johnson assumed a voting seat.

- 1) Case # 10-1  
Petitioner: Jessica Paskalis  
Property: 74 Wentworth House Road  
Assessor Plan 201, Lot 20  
Zoning District: Waterfront Business  
Description: Reconstruct existing attached garage with living space above.  
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. Variances from Section 10.521 to allow the following: (a) a right side yard setback of 21'3.5" ± where 30' is required; and (b) a rear yard setback of 15'11.75" ± where 20' is required.

### **SPEAKING IN FAVOR OF THE PETITION**

The owner Ms. Jessica Paskalis told the Board some of the history of the house, stating that when she bought it 5-1/2 years before, it was a neglected foreclosed property. She restored some of the main living space by installing a new roof and windows, insulation, and an upgraded electrical system. Her goal was to continue the renovations by removing and rebuilding the mudroom and garage and converting the house from a two-bedroom into a three-bedroom home on the same footprint. She would also need a new septic system, which they would move outside of the wetland buffer. Ms. Paskalis stated that she had already received approvals from the State, the Conservation Commission.

She addressed the five criteria, stating that the proposal would not be contrary to the public interest because the Ordinance promoted the upkeep and improvement of homes and she didn't believe that the re-building of a legal garage in the same footprint would have a negative impact on the public. The spirit of the Ordinance would be observed because the essential character of the neighborhood would not be altered with the modest vertical expansion. There would be light and air buffers between the neighbors given the vast separation between structures and the mature buffer of the dense woods. Substantial justice would be done because the modest increase in the reconstruction of the garage for a legal existing home in the Waterfront Business Zone would not harm the general public or any abutters. The home had not had a waterfront business use in the recent past and may never have had one. The values of surrounding properties would not be diminished because the modest change would not negatively affect the property values of the abutters. The use would not change, the building footprint would be almost the same, and the location of the garage would be buffered by mature woods. The project would actually help the value of surrounding properties by installing a code-complaint septic system out of the wetlands buffer zone. Regarding the unnecessary hardship test in regard to the expansion, she felt it would be an unnecessary hardship not to allow a legally conforming single family home to make improvements, thus freezing it in perpetuity. There were special conditions in having a home in the Waterfront Business District. Another factor was the setbacks. For example, the Waterfront Business Zone side yard setback of 30' was 50% greater than the most restrictive setback of the residential zones listed in the Ordinance. Overall, she felt that the project was a reasonable use of the property and would not alter the essential character of the neighborhood.

Mr. LeMay asked what the existing foundation was. Ms. Paskalis replied that the main living space had a concrete block foundation and the garage and mudroom were rough rock foundation that needed a lot of work. Mr. LeMay asked if it was possible to go down into the basement. Ms. Paskalis replied that one could not go below the garage but there was a crawlspace under the mudroom. Mr. LeMay asked what caused the increase in the setbacks. Ms. Paskalis replied that the increase was necessary to meet the minimum requirements for room size and the space had to be expanded to make sure the stairs were up to code.

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

With no one rising, the public hearing was closed.

**DECISION OF THE BOARD**

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

Mr. LeMay stated that the minor request was straightforward and a few inches of dimensions would not affect the neighborhood. Normally, the Board was strict about that particular area, but because it was away from the water and had been established for some time, there was no harm in continuing what was. Substantial justice would be done because there was nothing in the public interest to argue against granting the petition. The value of surrounding properties would not be diminished because the changes would not affect any abutters. As to unnecessary hardship, the ledge in front would most likely account for why the house was set back.

Mr. Durbin concurred with Mr. LeMay and added that the increase in height was not an issue because it wouldn't affect the neighbors. It was a large lot in the Waterfront Business District, and no nearby neighbors would be affected. What made the lot unique and where there could be an inherent hardship was that it was an extremely large lot with an existing residential structure in the Waterfront Business District. For those reasons, he seconded the motion.

Mr. Rheame stated that there were no concerns about future building because the property was up against the conservation area on one side and the wetlands were on the back side, so he would support the petition.

*The motion **passed** by a vote of 7 to 0.*

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Chairman Witham resumed as Chair of the meeting. Mr. Johnson returned to alternate status.

- 2) Case # 10-2
  - Petitioners: Jocelyn & Stephen Jacques
  - Property: 514 Middle Street
  - Assessor Plan 135, Lot 19
  - Zoning District: Mixed Residential Office
  - Description: Add a second dwelling unit.
  - Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
    1. A Special Exception under Section 10.812 to allow the conversion of a pre-1980 building to two dwelling units.

Ms. Walker shared a memo from the Legal Department referring to the existing situation that related to a sewer line and read the last paragraph which stated that if approval for the petition was granted, it should include the stipulation that the owner would repair or replace the private sewer

line to the satisfaction of the Department of Public Works within one year of the approval, the owner being whoever then owned the property.

### **SPEAKING IN FAVOR OF THE PETITION**

Mr. Stephen Jacques was present to speak to the petition and stated that he and his wife Ms. Jocelyn Jacques wanted to change their building from a single residential structure to a multi-family one. When they bought the property in 2007, it had been a multi-family one for at least a decade or more. He stated that the standards for special exceptions as provided by the Ordinance had been met and there would be no hazard to the public on account of potential fire explosion or release of toxic materials and so on. There would be no detriment to property values in the vicinity or change in the essential characteristics of the area, including residential neighborhoods or industrial areas. There would be no creation of a traffic safety hazard or increase in traffic congestion. There would be no excessive demand on municipal services because the building had been a pre-existing multi-family home for a decade or longer. For the same reason, there would be no significant increase in storm water runoff onto adjacent properties or streets.

Chairman Witham asked if there were comments regarding the stipulation. Mr. Jacques replied that he had been in close contact with the Planning Board and had been working with them. Mr. Rheume noted that the parking diagram appeared to show four parking spaces behind the property, and Mr. Jacques agreed, saying there was room for five vehicles. Mr. Rheume asked Mr. Jacques if he had applied for a building permit. Mr. Jacques replied that he had because they had put the property up for sale and the potential buyer wanted a multi-family unit. Mr. Durbin asked if he meant a two-family dwelling and Mr. Jacques stated, “yes.”

Vice-Chair Parrott asked how it would be configured as a two-family dwelling, and Mr. Jacques replied that it would be up and down. Vice-Chair Parrott asked if it met the safety codes, and Mr. Jacques replied that it did. Vice-Chair Parrott asked if the City Inspection Department had gone on site since the two-family situation had come to light. Mr. Jacques told him that they had not because electrical work still needed to be done.

Ms. Walker stated that she spoke with the Building Department, who said they would evaluate the property to ensure that it complied with the safety code. The final building permit would not be issued until the Planning Board signed off on it.

### **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 with the stipulation that the owner shall repair or replace the private sewer line to the satisfaction of the Department of Public Works within one year. Mr. Rheume seconded the motion.*

Mr. Mulligan stated that special exceptions required the Board to review a different set of standards. The use was permitted by special exception since the structure existed prior to 1980,

and existing structures could be converted to multi-family buildings by special exception, so they met that criteria. He agreed there was no hazard to the public because it had existed as a two-family dwelling for over a decade. There would be no detriment to property values or change in the characteristics of the area as there would be no intensification of use. Any effects from the use had been realized by neighboring properties, and property values had not gone down in the last decade. There would be no creation of a traffic safety hazard or an increase in traffic. The existing water and sewer would not change so there would be no additional demand on municipal services.

Mr. Rheume concurred with Mr. Mulligan’s comments and had nothing further to add.

*The motion passed by a vote of 7 to 0.*

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3) Case # 10-3

Petitioners: Debra A. Nash dba Five N Associates, owner & James Davis, applicant

Property: 235 Heritage Avenue

Assessor Plan 284, Lot 2

Zoning District: Industrial

Description: Provide off-street parking spaces for a religious assembly use.

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

1. A Variance from Section 10.1112.30 to permit less than the required number of off-street parking spaces.

**SPEAKING IN FAVOR OF THE PETITION**

The applicant, Mr. James Davis of Great Bay Calvary, stated that he had previously met with the Board in July to ask for two variances for the same project. The first variance was to use the industrial space as a place of assembly for his church and the second variance was for parking, both of which had been granted. He had then discovered that the building itself had a larger footprint and there would be room for 236 people to attend their services, so they needed additional parking and were seeking another variance. Their service times were off-business hours. Midweek service was after 6 p.m. and Sunday morning service was at 10:00 a.m. No other businesses were open at that time, so parking would not be a problem.

Mr. Davis went through the criteria but first explained the sense of community that Great Bay Calvary gave to Portsmouth. In the spirit of the Ordinance, a parking variance was previously granted and they were simply seeking additional relief based on square footage. The current uses of the property were as industrial warehouse and administrative offices during normal business hours, and peak usage of Calvary would occur outside normal business hours. Substantial justice would be done because it would benefit the people of Portsmouth. The values of surrounding properties would not be diminished. Traffic flow and parking would not be heavily impacted due to several routes to the property as well as multiple entrances to the parking area. As for literal enforcement of the Ordinance, the essential function of their building unit would not change during normal business hours and would provide usage in a portion of the property that had sat vacant for some time.

Mr. Rheume asked about the types of business that occupied the other building units. Mr. Davis replied that one was a scrapping company, and the other one did hotel furniture fittings and had storage in the warehouse behind the building. Mr. Rheume asked how many vehicles were usually present. Mr. Davis said there were normally three cars parked at the far end of the parking lot and occasionally semi-trucks came into the loading dock.

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

Attorney Bernie Pelech spoke on behalf of Great Bay Calvary and stated that nothing had changed since July other than the parking requirement calculation that was previously based on 40 people. The calculation of the occupancy of the building by the Building Department was now higher. He had never seen more than five vehicles parked in the lot. Granting of the variance would not change the neighborhood character because gatherings occurred on Sundays or after 6 p.m. during the week. It would not threaten public welfare, so the spirit and intent of the Ordinance would be maintained. Substantial justice would be done because if the variance were not granted, the hardship on Great Bay Calgary would be substantial as they had signed the lease after July when the variance was granted. The hardship on the applicant would be much greater than any benefit to the public if the variance was denied. Surrounding property values would not be affected. Given the fact that the applicant had a use that required parking based on square footage, which had already been approved, there were special conditions inherent in that which created the need for the variance. Usage would be during off-peak hours, so granting the variance was within the Board's purview.

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

### **DECISION OF THE BOARD**

*Mr. Moretti made a motion to **grant** the petition as presented and advertised. Vice-Chair Parrott seconded.*

Mr. Moretti stated that the applicant was asking for relief going from 52 to 55 spaces, and it was a small movement for parking spaces on a very large site. The proposed use would not be contrary to the public interest because there was no one against it and it was a religious facility that served the public. It would observe the spirit of the Ordinance because it had been approved a few months before and had off-peak hours. Substantial justice would be done because the Board had approved it recently and it was a small increase in what was already approved. It would not diminish the value of surrounding properties because this was a large commercial property and granting a few more parking spaces would not diminish property values. As to hardship, the requirement for parking was substantial but the parking lot was substantial as well.

Vice-Chair Parrott stated that the location was out of the way and the hours were off-peak, so he couldn't imagine that, even if the congregation grew beyond their present level and parking got a bit congested, it would have any effect on the public, so he felt that it should be approved.

Mr. Rheume stated he would support the motion, although the amount of relief asked for, a deficit of 52 spaces, would typically not be something he would support. The applicant had made a strong argument that their parking needs occurred at a different time from the current users, and he found it hard to believe that the 3,900 square feet would see the kind of occupancy that the

Ordinance would say would fill it up, based on the layouts and information provided by the application, so he approved the petition.

*The motion passed by a vote of 7 to 0.*

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4) Case # 10-4

Petitioner: Anita E. Thomas Revocable Trust, Anita E. Thomas, Trustee

Property: 33 Kent Street

Assessor Plan 113, Lot 44

Zoning District: General Residence A

Description: Reconstruct and extend garage.

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. Variances from Section 10.521 to allow the following: (a) a right side yard setback of 2'± where 10' is required; and (b) a rear yard setback of 6'2" ± where 12.5' is required; and (c) 26.6% building coverage where 25% is the maximum allowed.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Peter Coren, representing Ms. Anita Thomas, was present to speak to the application. He gave a brief history of the property, saying that Kent Street was on the other side of the park and all the surrounding houses had small lots with driveways beside them that went directly into the garages. Many of the houses had improved garages that seemed to be right on the property line or just a bit over. The applicant was asking for a larger garage that did not encroach upon the side lot and the rear lot. It would not be contrary to the public interest because it would maintain the character of the neighborhood, and the location on the lot would be similar to what was currently in the neighborhood. The spirit of the Ordinance would be maintained because it would be a more useful and appealing structure that would not encroach on the side or rear setbacks. There would be no threat to public health, safety and welfare, nor any injury to public rights. The view of the park was very important, but it was behind the house, so the project would not encroach on the neighbors' views. The new garage would be more in keeping with the neighborhood's properties, and there would be no harm to the general public because the garage would have an improved appearance and have a more appropriate use that would enhance the property without further setback encroachment. Substantial justice would be accomplished. Surrounding property values would not be diminished by the building because it would be better looking, more useful and more appropriate to the neighborhood.

Mr. Coren stated that the property consisted of an undersized lot of 6,500 square feet, where 7,500 square feet was required in the Zoning Ordinance. Street frontage was 65 feet where the Zoning Ordinance required 100 feet of continuous street frontage. Both the size of the lot and the street frontage produced a hardship in placing any structure. Ms. Thomas was requesting a reasonable exception to the Ordinance to allow her to build the garage in the same location as it currently existed and maintain the same setbacks. The proposed enlargement of the structure would not

encroach any greater into the setbacks than the present structure did. If the variance were granted, the applicant would not have her view of the park eliminated and would not have to reconfigure her driveway differently at a substantial cost or have her garage in the center of her backyard, which would destroy the functionality of a family-friendly backyard in Portsmouth. The structure would be consistent with others in size and location and would actually be smaller compared to other garages. The new structure would be an improvement to the property as a whole. Mr. Coren stated that he had a letter from a neighbor expressing approval. Chairman Witham asked where the abutter lived, and Mr. Coren replied that the abutter lived on the left side of the property. Chairman Witham asked if the right-side line of the garage would stay the same and if the rear line of the garage would stay extending 6' towards the center of the yard in width and 6" toward the street in length. Mr. Coren agreed.

Mr. Rheume asked whether the garage was custom designed for the location or a standard pattern. Mr. Coren replied that it would be on a monolithic slab similar to the existing garage and would fit the neighborhood's designs. Mr. Rheume asked whether the specific size was driven by a standard size. Mr. Coren replied that they had considered a 2-car garage, but then felt that their custom design would be more appropriate. Mr. Rheume noted that the height of the new garage seemed to be 5 feet taller than the existing garage and asked if the roof pitch was the same. Mr. Coren replied that the roof would have a higher pitch to fit in better with the neighborhood and not detract from the views.

Ms. Susan Javurek of 45 Kent Street stated that she was the other abutter and had no concerns with the project and was delighted with it. Mr. Rheume verified that the additional height of the garage would not be a concern for her.

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

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

### **DECISION OF THE BOARD**

*Vice-Chair Parrott made a motion to **grant** the petition as presented and advertised. Mr. Rheume seconded.*

Vice-Chair Parrott stated that the petition was a minor expansion of the project and in keeping with the neighborhood scale. The garage would not move closer to the setbacks, which were already less than required by the Ordinance. It would come slightly closer toward the front of the street and would go about 6-1/2' toward the middle of the yard and be a little higher. It would not be contrary to the public interest and would observe the spirit of the Ordinance because it would not have an adverse effect on the public's use of the park. The spirit of the Ordinance had always encouraged the improvement of property as well as making property more useful, and the choice to go with less than a maximum garage was appropriate. Granting the petition would do substantial justice in terms of the owner's rights and there would be no detriment to the general public. The value of surrounding properties would not be diminished as other garages were bigger, and replacing the existing garage would only benefit surrounding properties. Putting the garage in the proposed location would be consistent with other properties in the neighborhood. Vice-Chair Parrott felt that the petition met all the criteria.



Mr. Rheume concurred with Vice-Chair Parrott, adding that it was a tiny garage compared to others in the area. The applicant was asking for a reasonably sized structure and not something out of character for the neighborhood. It would not be contrary to the public interest. The applicant had made a strong case about the neighborhood’s rhythm and property lines, and a house with a separate garage would not be contrary to established patterns in the neighborhood. With regard to the hardship criteria, the property was unique in having municipal land at the rear which would less of a concern than if another home were right behind it. The spirit of the Ordinance would be met because although quite a bit of relief was asked for in terms of the side setback -- 8 feet less than the 10 feet required -- other garages in the neighborhood were similarly situated, and the abutters had stated that it would not affect them in terms of light and air. He felt that the applicant met the requirements.

*The motion passed by a vote of 7 to 0.*

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5) Case # 10-5

Petitioners: Richard M. & Susan H. Shea

Property: 19 Howard Street

Assessor Plan 103, Lot 82

Zoning District: General Residence B

Description: Construct 10’± x 14’± storage shed with 5’± x 8’± lean-to.

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

1. A Variance from Section 10.521 to allow a right side yard setback of 0.98’± where 10’ is required.
2. A Variance from Section 10.521 to a rear yard setback of 3.35’± where 10.9’ is required.

**SPEAKING IN FAVOR OF THE PETITION**

The owners, Ms. Susan Shea and Mr. Richard Shea, were present to speak to the petition. They spoke of the enclosed 10’x14’ wood shed in the backyard and stated that there was no outside storage on their property, so they wanted to store mowers, garden supplies and similar items. The equipment was unsightly for their neighbors. They would locate the shed close to lot lines to maintain as much open space as possible for themselves and the neighbors. The location they chose would keep the building away from the roots of a beautiful old maple tree, and the chosen area would not block any light for themselves or their abutters.

Mr. Shea had several photos in his packet, which he distributed. He stated that the neighborhood had nonconforming lots throughout. When he bought the house four years before, it was condemned by the City. It took them a year and a half to restore it. He pointed out various views of the property and the neighborhood as well as property line dimensions and a neighbor’s fence. Ms. Shea showed an old photo of the South End’s typical buildings as well as a street map. She pointed out outbuildings and sheds that were built on or near property lines throughout the neighborhood. Mr. Shea stated that Ambit Engineering had done a survey to locate exactly where their property was. He showed the house’s footprint and several diagrams. Their proposed shed would have wood shingles, antique window sashes, and original hardware for the doors. It would

sit on piers and would have a deck. He also showed the elevations. He noted that they would go before the Historic District Commission (HDC) as well. Ms. Shea stated that she had seven letters from their abutters who supported their project.

Mr. Rheume stated that he was concerned with the drawings on pages 24 and 25. On page 25, there were dimensions of 3'6" between the fence and the proposed shed that he did not understand, and nothing on page 24 showed exactly the portion of the structure to the end of the shed and the end of the lean-to property line. He mentioned .98 feet and asked whether it was to the end of the shed and where the dimensions came from. Mr. Shea stated that on page 25, the front of the shed had 3'6" clear, and the other 3'6" was the dimension from the front lot to the corner of the house. He had tried to show how close the structure was to the fence and how far up the house was from their property line. Mr. Rheume asked if the privacy fence was on the neighbor's property and was told that it was. He asked where exactly the .98 feet was, and Mr. Shea told him that it was the 4'x4' post closest to the back property line on the right-hand side. From that corner up to the fence, there were about 30 inches. Mr. Rheume noted that the fence slanted closer to their property line and asked what drove the dimensions for moving the shed. Mr. Shea talked about a slight jog at the site of the outhouse where they wanted to maintain a 3' clear aisle from the corner of shed to the property line because they needed to walk behind it. Mr. Rheume confirmed that the back fence crossing between the property lines would remain and was actually the neighbor's fence.

Ms. Catherine Williams Kane of 337 Pleasant Street stated that her property backed Howard Street and pointed out the photo of the large lot that fell across Howard Street, which was also her lot at 355 Pleasant Street. She stated that she had the most exposure to the project and felt they had been very careful and historically accurate in keeping everything in context with the neighborhood. She was in favor of the project and said the structure was diminutive, to the rear of the lot, and would not be much different from what already existed in the South End.

Mr. Christopher Brodeur of 51 Manning Street agreed that it would be a benefit to the neighborhood and in keeping with it, and he and his wife fully endorsed the project.

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

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

### **DECISION OF THE BOARD**

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

Mr. Mulligan stated that the applicant was requesting some setback relief to build a shed in the historic South End and had done a very nice job so far in improving the property. He did not think the project would be any different, based on the impressive presentation. Granting the variance would not diminish the value of surrounding properties because many neighbors had similar sheds. Also, the HDC would have to weigh in on the design details. Substantial justice would be achieved due to the need for outdoor storage. The project had significant support from neighbors and abutters, so there would be no gain to the public if the variance were denied while a hardship

would be placed on the applicant. Granting the variances would not be contrary to the public interest or the spirit of the Ordinance. Most of the properties in the South End neighborhood had similar structures and violated side and rear yard setbacks, so the project would not alter the character of the neighborhood or threaten the health, safety and welfare of the public. The general purpose of the zone would not be frustrated by adding the shed and the lean-to. As to unnecessary hardship, the lot was an odd-shaped one, and if the applicant were to site it somewhere else, it would spoil the open space and the existing rear yard. It was the most logical place for a shed, which was a reasonable use, so the special conditions of the property distinguished it from others in the area. There was no apparent substantial relationship between the purposes of the setback restrictions as they applied to the property. Most other properties had similar accessory structures. For all those reasons, he felt that the variance should be granted as presented.

Mr. Rheume concurred with Mr. Mulligan’s points and stated that the toughest issue was the spirit of the Ordinance. The applicant was asking for substantial relief on setbacks, roughly one foot where ten feet were required, but what helped the applicant meet the criteria was that they were only asking for setback relief. Due to the size of the lot and the building, they met the building coverage. They would still be below the maximum by almost 3%. Open space coverage was 25% of the lot, and they would have far more than that at 40%. They still had plenty of room on the property for the shed, and the location they chose was a unique opportunity to place the structure with the least amount of impact to themselves and their neighbors. Therefore, he felt that it met the spirit of the Ordinance and recommended approval.

*The motion passed by a vote of 7-0.*

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Mr. Moretti recused himself from the following petition. Chairman Witham noted that Mr. Johnson lived near the applicant and had received an abutter’s notice and he could recuse himself if he felt it necessary. Mr. Johnson stated that he did not know the applicant and felt that there would be no conflict. Vice-Chair Parrott stated that Mr. Johnson shared no property lines, so he had no problem with him voting on the petition. Mr. Johnson stated that he was comfortable voting and assumed a voting seat.

- 6) Case # 10-6
  - Petitioner: Mark R. McNally
  - Property: 897 Woodbury Avenue
  - Assessor Plan 219, Lot 35
  - Zoning District: Single Residence B
  - Description: Convert existing single-family structure to a two-family.
  - 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 two-family dwelling in a district where a two-family dwelling is not allowed.
    2. A Variance from Section 10.521 to allow 13,180± s.f. per dwelling unit where 15,000 s.f. is required.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Steven Hyde was present to speak to the petition. Mr. Hyde told the Board that the variances requested regarded the conversion of a single-family residence with a large barn into a multi-family residence to create a condominium of two separate units with the minimum square footage. The current building was a residential unit and an existing business, which was a nonconforming use in the zone. Mr. Hyde stated that the Ordinance allowed the owner to swap the nonconforming use for another nonconforming use, pursuant to the Section 10.335 through a Special Exception process.

Ms. Walker stated that the Planning Department had no record that the commercial use of the property was ever granted or was a legal-nonconforming situation. Mr. Hyde stated that part of the packet submitted by the applicant included a letter from 1984 indicating that the commercial space use was allowed. It was a letter from the City to Mr. Richard Ireland, indicating that the use of the structure would be 1,539 square feet of residential with the attached barn of 1,200 square feet for a tackle shop on the first floor and a wood shop on the second floor of the barn. It had been signed by a 1984 Zoning Officer. Mr. Hyde also had a letter from the seller to Mr. McNalley indicating that the property had been used commercially as far back as the 1940s. Ms. Walker said that it had recently not been used as a tackle shop or a wood shop and the Planning Department had established that what had been there most recently was not a consistent use. There had never been discussion of whether it was a conforming situation. Mr. Hyde said the letter from Mr. Ireland stated that the family had continued the business in the same footprint. The business changed over time, but the consumer use business continued up to June, at which time the property was sold to Mr. McNalley. Mr. Hyde believed that a nonconforming use was not abandoned unless it ceased to be used for a commercial purpose for a period of 18 months, according to the Ordinance. Ms. Walker stated that no change of use was ever applied for, and typically when a business changed, there was a Change of Use record in the Building Department that was reviewed by the Planning Department to make sure it was a consistent use, but this had not occurred.

Mr. Hyde stated that he would go forward with the criteria. The building and lot had existed since 1982. The building was on a larger lot prior to 1982. The building had a single residence unit and an accessory business unit that had been in existence since at least 1940. The building had been sold to Mr. McNalley in June 2014, and he wanted to change from the nonconforming existing use of the business to a second unit, which would become a condominium unit, resulting in two single-family units conjoined by a single wall. The building was situated between two driveways and two separate sidewalks, which would make it a special condition in that zone.

Mr. Hyde stated that granting the variance would not be contrary to the public interest or violate the spirit of the Ordinance in that the Ordinance called for 1-3 dwelling units per acre in the Single Residence B Zone. Eliminating the business use in the barn and transferring it to residential use would be in the best interest of the public. It would not conflict with the basic zoning objective of the Ordinance. Substantial justice would be done because no harm would be caused to the general public. The building when purchased by Mr. McNalley had a lean-to shed on the northern side of the barn that was close to the property line. The lead-to shed was removed as well as a separate barn-type building on the easterly side of the barn. There was no expansion of property requested. Values of surrounding properties would not be diminished but in fact would be increased due to lower traffic and the more conforming use of the property. Special conditions existed because the structure was situated on the lot with two sidewalk cuts and two separate driveways, one of which was traditionally used to access the residence and the other to access the barn and the business part

of the property. The proposed new use as a residence would be a reasonable one. Mr. Hyde stated that he had copies of the deed with the date of transfer as well as four letters from neighbors in favor. He pointed out that there were several other structures on the same street with multiple units and cited 876 Woodbury Avenue as an example of a two-family building that looked like a single-family home with a single driveway. He also mentioned another apartment building greater than 8 residential units and another owner that ran a roofing company out of the home.

Chairman Witham asked for the locations of the letter writers. Mr. Hyde replied that they resided at 880, 890, 893, and 865 Woodbury Avenue and were not direct abutters.

Mr. McNalley explained further where the letter writers were from. Chairman Witham asked for copies of the letters and their locations.

Mr. Rheaume thought the expansion of use was a concern because the property was on the City sewer system, and he asked if there would be increased needs in water and sewage. Mr. Hyde replied that there was no issue with running a separate line. Mr. Jeff Halldorson, the lead contractor on the project, stated that they had dealt with the utilities.

Mr. Rheaume stated that a substantial amount of work had already been done to the property and asked what they would do if the variance was not granted. Mr. Hyde replied that his client would use the property for commercial use as in the past. However, someone from the City had suggested making it a multi-family structure, which caused the investigation to ensue.

Mr. Mulligan pointed out the photo on page 6 showing the right side of the property near an abutting property and asked if the direct abutter had two dwellings on one lot. Mr. Hyde agreed and said the abutter was in the same zone but not the same street. That particular lot was Lot 1 of the 1982 subdivision. The subject lot was #3.

The realtor, Mr. Buddy Dow, stated he had sold the house which his grandfather bought in the 1930s. Mr. Dow had spent his childhood there and he knew there had always been a business with a lot of traffic and felt that there would be substantially less traffic. He thought what had been done to the property inside and out was amazing.

Mr. Halldorson stated that his client had spent a lot of money to reduce the impact on neighbors by removing existing structures that were encroaching on property lines. His intention was to bring his property up to current code internally and externally, regardless of whether or not he got the variance. Mr. McNally had also hired a structural engineer to ensure that the barn was brought up to existing structural code. The driveway would allow vehicles to turn around on it, keeping safety in mind as far as traffic flow and neighbors.

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

Ms. Stephanie England rose and stated that she was the next-door neighbor and lived at 915 Woodbury Avenue. She had not been aware of the meeting. She stated that her property was almost on top of the applicant's property. The applicant's property had a tiny driveway, and the structure was a tiny shed area with a plastic barrier that was removed. She had been told that the property was not big enough for two units and she felt that the driveway was too close to her house and diminished its value. She was currently renting her house because she could not afford

to renovate it. She stated that her renter had told her about the petition, saying he had wanted to buy her house but changed his mind when he found out about the project because he felt it would depreciate the house. She claimed that the realtor had told her he hoped the house wouldn't be renovated but it seemed he was then in favor of it. She felt that since the property was a Frank Jones property, the neighborhood should be returned to the Frank Jones era. She asked that the applicant's property not be turned into a multi-family structure.

Ms. Walker noted that the Planning Department sent out abutter notices based on the records in the Assessing Department and apologized that it had not reached her at her Merrimack, NH address.

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

Mr. Hyde wanted to address the concerns raised by Ms. England. The closeness of the buildings had not changed. The 12'x30' enclosed roof structure between the outside wall of the barn and the lot line between the property and Ms. England's property was removed. He felt that removing the structure improved the look. In 1982, the lot had been subdivided into three lots. The interior character of the home at the time of purchase was severely degraded and had been brought up to code. The turnaround outside the barn that had already been approved considered the barn and the driveway. Mr. Hyde further discussed the turnaround that could accommodate multiple cars. The zone allowed the conversion to a multi-family unit, and the request was to make the structure two single-family condominiums. Mr. Halldorson said that he and Mr. McNalley had tried to reach Ms. England but she had not returned their call. Ms. England said the voice message was about cutting down her tree because of squirrels.

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

### **DECISION OF THE BOARD**

Chairman Witham stated that he was always in favor of preserving barns in Portsmouth but that they needed adaptive re-use. The project's barn had a business in it. The Board of Adjustment had other barn conversion requests, and the project was under what was allowed. They were asking for two dwelling units where only one was allowed, but preserving a barn was important in historic Portsmouth and he felt that it was appropriate in that situation because it had been active for many years and was an appropriate use for the barn.

Vice-Chair Parrott stated that the neighborhood was predominantly single-family residences with many odd-sized lots. The house and the barn fit very well with the size of the lot, and the structure was a bit bigger than the others, but he felt that was no reason to cut it up and make it into a duplex. No speakers had commented about hardship, and hardship had to be inherent in the property. He didn't see any. The structure could be used in the zone as a single-family residence. Just because it had been used in an odd fashion in the past didn't mean anything. He never saw commercial activity when he drove by the property. He did not find the New England style of having the house and the barn attached odd at all but thought that it would be inappropriate to make the structure into a duplex. It would be out of character with the neighborhood. He appreciated that the structure had been upgraded but felt that the proper use in terms of zoning compliance and neighbor respect meant retaining it as a single family dwelling.

Mr. Rheume stated that he had struggled with the petition because it was an unusual circumstance in the neighborhood, which used to be open fields with older buildings that had barns, and there were original Frank Jones buildings that were very large. However, these were modern circumstances. He asked whether it was economically feasible to restore the whole thing and make it look historic. He felt that it was a unique situation. The barn with all its windows lent itself to residential use. He thought what the applicant proposed was reasonable. He mentioned previous applications and stated that the petition was for a much larger lot with a unique hardship aspect to it. The nature of the two buildings gave themselves over to two separate buildings. The driveway was acceptable with the demolition of the side building. The barn met the requirements of the 10-foot distance to the side of the property. Its site was allowed by zoning, and he was in favor of granting the applicant's request.

Mr. LeMay stated that there was more land originally that required a barn, but those days were gone. The neighborhood had closed in around the property. He thought that it was important to have a viable use to maintain the property, and the neighbor's comments were well taken in that respect, but it was not a reality to have a barn in that area.

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

Mr. Rheume stated that the petition was not straightforward, but the owner had the right to develop the property within the Zoning Ordinance. One criteria did not fit every situation, and the petition was an individual case. Granting the variances would not be contrary to the public interest because of the nature of the neighborhood. The building was a bit different from the rest of the neighborhood. The property was a large lot and contained existing structures that were not being added to but were just being altered in terms of purpose, so it was within the neighborhood character. Some of the other old buildings no longer met the nature of what the current neighborhood was. What the BOA was granting was the front house and the back house as two separate units. The spirit of the Ordinance would be met because there were single-family homes on decent lots of medium-to-low densities. Substantial justice would be done because the owner could make full use of his property and provide additional housing space in the City. The change would be in keeping with existing structures, and the dwelling would continue to look like it once did instead of looking modern. It would still look like a single-family home. It would not diminish the value of surrounding properties. Mr. Rheume acknowledged the abutter's concerns, but renovation as a whole, which would include improving the structure's appearance, would be a plus to the value of surrounding properties. As for the hardship test, the lot size relative to normal in that district was quite a bit larger, and it was an older home, so the owner was in a unique situation because he could not use the property in strict conformance with the Ordinance. Mr. Rheume felt that all five criteria were met and that the petition should be granted.

Mr. Durbin concurred with Mr. Rheume's comments and added that one of the more difficult parts of the variance test was the hardship aspect. The lot was very large for the district and had a unique configuration of structures. The barn/garage was enormous. Traditionally, it had been used as a business, and it was irrelevant whether it was grandfathered or not. The lot size and configuration of structures with an existing driveway on either side created hardship and would make it difficult for people to utilize the structure as just a single family structure, so he thought it was appropriate for the use being proposed. Concern was expressed about surrounding property values being diminished, which he did not agree with. In considering how the property had been

historically used and the shape it was in when the applicant bought it, common sense dictated that the property values would be increased. The existing character of the neighborhood was predominantly single-family residences, but there was a good sampling of business uses and 2-family structures, so the neighborhood character was not completely single-family residences. The proposed use would fit in with the existing neighborhood character, so he supported it.

*The motion passed by a vote of 6-1, with Vice-Chair Parrott opposed.*

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Mr. Mulligan recused himself from the following petition. Mr. Moretti resumed a voting seat. Mr. Johnson remained in a voting seat.

7) Case # 10-7

Petitioner: Trisha Ballestero

Property: 116 Austin Street

Assessor Plan 136, Lot 29

Zoning District: General Residence C

Description: Replace existing porch & deck with 6' x 20' two-story addition.

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. Variances from Section 10.521 to allow the following: (a) a right side yard setback of 9.5'± where 10' is required; and (b) a left side yard setback of 3.5'± where 10' is required.

**SPEAKING IN FAVOR OF THE PETITION**

The architect Mr. Robin Wunderlich and the owner Ms. Trisha Ballestero were present to speak to the petition. Mr. Wunderlich gave a brief history of the 1850 house, saying that it was 600 square feet and the existing nonconforming lot area would remain the same. They proposed raising the house two feet to have a usable basement, but it would not exceed the zoning height requirements. The lot cover and minimum open space were well within those considerations. They were also proposing to expand the indoor living spaces into the footprint currently occupied by a deck and a 3-season porch. The expansion would not exceed the current footprint or increase the lot coverage. The expansion also called for a 2-1/2' increase in the height of the cellar ceiling, which was currently six feet by raising the existing house off the foundation and adding a 2-1/2-foot knee wall for adequate head room and ventilation. Modifications would increase the total building height to 30 feet. The modifications were proposed to allow for code compliance for the stairs and egress and to allow for comfortable occupancy of the building.

Mr. Wunderlich stated that granting the variances would not be contrary to the public interest. The house would present to the public on the street side as it currently was, with the exception of the added 2-1/2' foundation, which was similar to the house on the west side. At the rear, the roof was being configured to have minimal impact from the standpoint of light to the closest house to the east, with no impact to surrounding properties. Mr. Wunderlich also mentioned the gable that



would allow the sun to shine on the house to the east. The spirit of the Ordinance would be met because the reconfiguration would allow for code compliance for the interior stairs and also allow room for the health and safety of the occupants without adversely affecting surrounding structures. Substantial justice would be done by allowing the use of bedrooms with an adequate ceiling height rather than sloping ceiling starting from a 3' knee wall. The current bathroom condition did not allow a shower. Granting the petition would allow a small but usable kitchen on first floor. If denied, the applicant would be living in 19<sup>th</sup> century conditions, with steep stairs and minimal living areas. The value of surrounding properties would not be diminished because there would only be a slight impact on the house directly to the east side with the additional space. Going from three bedrooms to two bedrooms would promote a single-family occupancy and would be better than the existing condition that looked like a rooming house. It would also present a more attractive façade to the neighbors to the rear.

Mr. Wunderlich contended that literal enforcement of the Ordinance would result in unnecessary hardship because the current configuration would make code compliance more difficult. Mr. Wunderlich went through the packet and showed photos of the front of the house. The front would remain the same except for the added two feet at the bottom of the house. He pointed out that the house to the west had the same raised foundation. A photo of the rear yard showed decent space. He showed the elevation where the deck would be and also showed where the gable would be added above that area. The existing first floor showed the diminutive nature of the house. The stairs were very steep but could be expanded with additional area. The second floor had three bedrooms, including a very small one. The roof sloped down, allowing only sitting-down bathing. He had put together a site plan to show how the new roof would be configured, with pertinent distances.

The proposed first floor would have a 6' addition to infill the area and expand the staircase and usable living area. The second floor would have two comfortable bedrooms with closets and baths. The third floor would be a storage area. He showed the proposed section of the stair area and the windows that would be put in the basement area. Raising the house by 2' would give it more light. He discussed the roof and how they would add a dormer on the back. The north elevation would be 2' further above the ground. The existing peak of the roof was the same but they were simply adding the gable off the back of the building, in the south elevation. The east elevation would have egress casement windows.

Mr. Rheume stated that it was a very small house, so he could understand the need to increase the amount of room and felt that it was a reasonable proposition. He struggled with the substantial new gable off the back end of the house because they were already raising the house by 2 feet. He asked if the gable was the only option and whether Mr. Wunderlich had considered a lesser pitched gable coming off the back, because the current gable was very steep. Mr. Wunderlich replied that they had wanted a smaller pitch initially, but the house to the right would have been impacted more. By putting the gable coming out and the pitch perpendicular to the other ridge, it would allow more light and air to that house. Otherwise, the roof would be all the way out to the side, causing more shade to the house. Mr. Rheume verified that the new gable would have the same pitch as the front gable. Ms. Ballestero stated that she had talked to all her abutters and that they all favored the project.

Mr. Johnson asked what the proposed final square footage was. Mr. Wunderlich replied that it was 600 square feet, which was the square footage of the footprint, so adding 6'x'19' to the

second floor would be the only additional space and would not increase the footprint. Mr. Moretti noted a rear porch/deck and asked if it was calculated into the footage. Mr. Wunderlich told him that it came off the existing back porch. Mr. Moretti said the aerial didn't show it that way. He was also concerned about the rubble foundation because they were going to raise the house. He asked if they would reinforce the foundation. Mr. Wunderlich verified that it was a rubble foundation that was mortared and stated that a structural analysis would be done.

### **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**

*Vice-Chair Parrott made a motion to **grant** the petition as presented and advertised. Mr. LeMay seconded the motion.*

Vice-Chair Parrott noted that it was a very small house with lots of constraints, and there would be a major upgrade to the house that would be towards the middle of the back yard, with little or no impact to the neighbors. It would be a tremendous upgrade to the house in terms of usability, and the space was sorely needed. It would not be contrary to the public interest and would observe the spirit of the Ordinance because the Ordinance encouraged people to maintain and upgrade their properties when appropriate, and it would be a major upgrade that would reflect well with other houses and would be almost invisible to the street. Substantial justice would be done because the balancing test clearly tipped to the owner in upgrading and enlarging the house. It would not diminish property values of surrounding properties because the tasteful addition would improve properties on either side as well as nearby properties. It would make the house much more attractive and usable. The small size was very limiting and the property was long and narrow, and it would be built out the back in a tasteful manner. As for the hardship test, the confines of the narrow lot and the small house were limiting factors. The addition would correct a lot of those things. He felt that the project clearly met all the criteria.

Mr. LeMay concurred with Vice-Chair Parrott's comments, adding that the requested variances were very minor.

*The motion **passed** by a vote of 7-0.*

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### **III. OTHER BUSINESS**

Chairman Witham noted that Ms. Chamberlin's term would expire in December, causing a vacancy, and asked if anyone knew someone who would be interested in replacing her.

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### **V. ADJOURNMENT**

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 9:35 p.m.*

Respectfully submitted,

Joann Breault  
Acting Secretary