

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

7:00 P.M.

October 18, 2022

MEMBERS PRESENT: Jim Lee, Vice Chair; David MacDonald; Beth Margeson; Paul Mannle; Phyllis Eldridge; Thomas Rossi; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Peter Stith, Planning Department

Vice-Chair Lee stated that Chairman Parrott had resigned and that he would be Acting-Chair for the evening. He welcomed the new board member Jeffrey Mattson.

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meetings of September 20, 2022 and September 27, 2022.

Per Mr. Rossi's request, the September 20 minutes were amended to change a sentence indicating that the view was from the abutter's windows and not the applicant's. The amended sentence reads as follows: Mr. Rossi asked if the deck provided an additional view **from the applicant's windows** that wasn't already there, and Ms. Tapscott agreed. On the September 27 minutes. Ms. Margeson asked that the word diminuous on page 11 be changed to the word **de-minimus**.

The September 20 and 27 minutes were **approved** as amended by unanimous vote, 7-0.

Acting-Chair Lee asked that Petition E, 67 Ridges Court, New Business be addressed out of order so that it could be postponed.

Ms. Margeson moved to **postpone** the petition to the November 15 meeting, seconded by Mr. Mannle. Ms. Margeson said the request to postpone was reasonable in light of last-minute submissions. The motion **passed** by unanimous vote, 7-0.

II. OLD BUSINESS

A. The request of **Kathleen E. Oprea and John Schroeder (Owners)**, for property located at **1344 and 1346 Islington Street** whereas relief is needed to construct a new deck and add detached garage which requires the following: 1) Variances from Section 10.521 to allow:

a) a 28' rear yard for the deck where 30' is required; b) a 2' left side yard where 10' is required for the garage; and c) a Variance from Section 10.521 to allow 30% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 98 and lies within the Single Residence B (SRB) district. (LU-22-160)

SPEAKING TO THE PETITION

The owner Kathleen Oprea was present to speak to the petition. She showed a map indicating all the nonconforming lot setbacks in the neighborhood. She said she was now asking for a 4' left yard setback because the revised garage plan made the garage narrower by two feet. She said gravel and drywells were added on both sides of the garage to address drainage issues, and a privacy fence was also added. She reviewed the criteria. She said the deck plan was also revised to add an 8-ft privacy screen and bushes in the back of the deck to reduce noise and views for the rear abutting neighbor and to add drainage to reduce the amount of standing water. She reviewed those criteria.

Mr. Mannle asked if any of the houses shown with nonconforming setbacks received variances. Ms. Oprea said that some had and others were predated. Mr. Mannle asked if the houses with nonconforming lot coverage had received variances. Ms. Oprea said at least three of them had.

Acting-Chair Lee opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Brad Meade of 1324 Islington Street said he had concerns about not having a survey of the property showing that the garage was four feet away from the property line and the need for a letter stating that a fence would be put up. He said he had mowed the property for 15 years and never saw standing water. He said the drywells would help contain the water but his neighbor was concerned because Melbourne Street had problems with drainage. Mr. Rossi asked Mr. Stith if the applicant's statement that she would have a fence would be a stipulation and whether a survey was typically done. Mr. Stith said a 6-ft fence could go on the property line but not in the front yard, so it would have to meet the front yard setback and then it could be 6 feet to the rear. He said typically an as-built survey for the garage foundation would be required, which would suffice. Mr. Meade said the applicant was basing the property line on where he had put up stakes.

Jill Tapscott of 163 Melbourne Street said her property was directly behind the applicant's property and her concerns included the size of the garage and deck, potential water damage to the abutters, the lack of credible data and information on the proposed drainage system, the fact that the proposed garage would make the property look very different than the surrounding ones and take away open space, and the fact that privacy concerns with the deck had not been addressed.

Ralph Dibernado of 1374 Islington Street said he had never seen standing water on Ms. Tapscott's property. He said he was concerned with the lack of process for verifying the lot lines and thought the submitted drawings didn't seem to have adequate measures for the lot coverage to determine the two front porches and stairs. He wondered if city officials verified those things. He said he hoped to see a clear statement relating to whether there was a hardship to the land.

Barbara Marino of 1345 Islington Street said she lived across the street from the applicant and was concerned about the appearance of an additional garage and fence. She said the house now abutted neighbors on the south side and the driveways were only separated by a fence. She said a view of trees, grass, and space was necessary and that she was opposed to the garage.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Jill Tapscott said there was a flat area on the applicant's property that could have a patio that would lower the noise level and provide more privacy for her and would make the property blend in better with the other single-family homes as opposed to a huge deck. She said the screening would not impact the noise level. She said there were no special conditions regarding the deck's height and the view from her window and no comparison for someone being on an outdoor deck a second story up and looking into her yard. She said it would permanently affect her property's resale value.

Ms. Oprea said she tried to appease her neighbors' concerns by the addition of the fence, screen, and drywells and did not imply that there was standing water on Ms. Tapscott's property but expressed concern that the project might create standing water. She said she would continue to work with her neighbors to make sure the solutions were functioning properly and that she would agree to have stipulations regarding the fences and the drywells. She said she would get a survey before the foundation was poured. She said a duplex required more building and outbuildings and that a deck was the best way to access the outside dining area.

Ms. Tapscott said the two neighbors' decks were nowhere near the size of the proposed deck and that the larger deck would have more activity and noise. She said the proposed arbovitae's size was not clarified and the water was a serious issue.

No one else spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Ms. Eldridge said the request seemed mild because an 8-ft deck wasn't enormous and asking for a garage for a home that has no parking on the street seemed very reasonable. She said there isn't a house in Portsmouth in which one doesn't hear their neighbor. She said she had trouble understanding why it was such an intrusion on the neighborhood, because even with an 8-ft deck, there would be 28 feet to the back neighbor's lot line and additional feet from the location of the house in the middle of the lot. She said it was a very reasonable request.

Ms. Margeson moved to **grant** the variances as presented and advertised, with the following **stipulations**:

1. The left side yard shall be four feet;
2. the building coverage shall be 29 percent instead of 30 percent; and
3. the property shall be surveyed.

(Note: the stipulations were added in after the criteria were read).

Mr. Rossi seconded the motion.

Ms. Margeson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She noted that, as case law and statute indicated, it's figuring out whether or not the variance requests would markedly be different from the underlying zoning, and whether or not the essential character of the neighborhood would be affected or the public's health, safety, and welfare would be threatened. She said she found that the construction of a garage and a deck to a residence would not alter the essential character of the neighborhood because there are permitted accessory uses to residential uses. She said substantial justice would be done and she didn't see any benefit to the public that would outweigh the loss to the applicant by being able to build the deck and the garage. She said granting the variances would not diminish the values of surrounding properties, noting that the board had no indication that the deck or garage would result in any water issues and no evidence that there would be increased water or drainage issues. She said she sympathized with the abutters for the loss of the view, but the project was an improvement to the house and would not diminish the values of surrounding properties. She said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property had special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance provision and the specific application of that provision to the property, and the proposed use is a reasonable one. She said the proposed use of a deck and a garage were reasonable in a residential area, and there are special conditions to the property including that it's a bit larger than some of the other properties in the area, it's a duplex, and the rear yard setback is very de-minimus because it's only two feet less than the minimum allowed by zoning. She said the building coverage does increase by ten percent but some of that increase is due to the deck, and even if the applicant put the deck on the ground floor, they would still need that rear yard setback. She said the left yard setback is significantly less than it currently is but it's necessary to place the garage there. She said it's not four feet based on the revised plans.

Mr. Rossi concurred and had nothing to add. The motion **passed** by unanimous vote, 7-0.

- B.** The request of **Martin Hanssmann (Owner)**, for property located at **130 Gates Street** whereas relief is needed to add an HVAC unit which requires the following: 1) A Variance from Section 10.515.14 to allow a 3' setback where 10' is required. Said property is located on Assessor Map 103 Lot 55 and lies within the General Residence B (GRB) and Historic districts. (LU-22-161)

SPEAKING TO THE PETITION

The applicant Martin Hanssmann was present via Zoom to speak to the application. He said he needed to add air conditioning to his basement and already had an a/c compressor on the third floor,

so the new compressor would be placed next to the existing one. He said a privacy fence would shield both units. He reviewed the criteria and said they would be met.

The Board had no questions. Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** the variances as presented, seconded by Mr. MacDonald.

Mr. Mannle referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the HVAC unit would be diminished from the current one at three feet. Referring to Section 10.233.23, he said granting the variances would do substantial justice because everyone needed heat. Referring to Section 10.233.24, he said granting the variances would not diminish the values of surrounding properties and would most likely increase the home's value. Referring to Section 10.233.25, he said literal enforcement of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguished it from others in the area, and owing to those special conditions a fair and substantial relationship does not exist between the general public purpose of the ordinance provisions and the specific application of that provision to the property. He said the proposed use was a reasonable one and the hardship does exist, considering the size of the property and where it sits on the lot.

Mr. MacDonald concurred. He said it was New England and one needed control over hot and cold weather with the change of seasons. He said if the air conditioning for the property wasn't adequate, then it needed to be improved. For those reasons, he said the variances should be granted.

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

- C. The request of **Judith A. Mraz Revocable Trust (Owner)**, for property located at **11 Walden Street** whereas relief is needed to install a heat pump which requires the following:
- 1) A Variance from Section 10.515.14 to allow a 1 foot rear yard setback and a 1.5 foot side yard setback where 10 feet is required for each. Said property is located on Assessor Map 101 Lot 17 and lies within the General Residence B (GRB) and Historic districts. (LU-22-177)

SPEAKING TO THE PETITION

Project contractor Jay Aucella was present on behalf of the applicant and said the intent was to install a heat pump system with one outdoor unit and three indoor units. He showed site photos and reviewed the criteria. He said the outdoor unit would be quiet and hidden by two trees.

The Board had no questions, Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variance as presented, seconded by Ms. Eldridge.

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said he did not believe that the ordinance was intended to prevent the modernization of older properties for the comfort of the homeowner's living, which would be the result of enforcing that when there is such little lot line clearance in older homes. He said substantial justice would be done because there is no benefit to the public that would necessitate the board to create a hardship for the homeowner by denying the variance. He said granting the variance would not diminish the values of surrounding properties because they will not be affected by a quiet, discrete, and hidden unit protruding from the side of the house. He said literal enforcement of the ordinance would result in an unnecessary hardship due to special conditions of the property, namely that the lot line clearance is very small and it's not possible to update the HVAC system without this sort of a variance.

Ms. Eldridge concurred and had nothing to add. The motion **passed** by unanimous vote, 7-0.

III. NEW BUSINESS

- A.** The request of **Lucky Thirteen Properties (Owner)**, for property located at **361 Islington Street** whereas relief is needed for the conversion of use to a restaurant which requires the following: 1) Variances from Section 10.5A41.10A to allow a) a secondary front yard setback of 66 feet where 12 feet is the maximum allowed; b) to allow a front lot line buildout of 32% where 60-80% is required; c) to allow a left yard setback of 30' where 20' is the maximum allowed; and d) 14.5% open space where 25% is the minimum required. 2) A Variance from Section 10.5A44.31 to allow off-street parking spaces to be located in front of the façade of the primary building. 3) A Variance from Section 10.440, Use #9.42 to allow a restaurant with an occupancy load between 50 and 250 3) A Variance from Section 10.5A44.32 to allow parking to be unscreened from the street. 4) A Variance from Section 10.575 to allow a dumpster to be located 19 feet from a residential zoned lot where 20 feet is required. 5) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. (LU-22-195)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant with his project team that included project engineer Eric Weinrieb and the owner Mike Labrie. He reviewed the petition, noting that the building was a gas station before and had deed restrictions and easements that limited what could be done with the property. He said the proposal was similar to the 2017 Lexie's Joint one but was less impactful. He said the petition had to go before the Technical Advisory Committee (TAC) to vet out issues with traffic flow, parking, and landscaping and also before the Historic District Commission (HDC) for the design. He said there would be trash cans and totes instead of dumpsters. He discussed the occupancy load issues at length and reviewed the criteria. He distributed copies of the meeting minutes from the Lexie's Joint petition and the board's concerns at that time.

Mr. MacDonald asked what would happen to the below-ground fuel tanks. Mr. Labrie said the tanks had been removed and there were monitoring wells on the property. He said the contamination levels had diminished over the years and continued to improve and that 200 yards of contaminated soil were removed. He said the Getty Corporation had a standing protocol to put deed restrictions such as having no residential use and so on whenever they sold one of their properties to limit their liability. Ms. Margeson asked why Fisher v. Dover did not apply to denial of what she thought was a different application from the August 2021 one. Attorney Durbin said they reduced the amount of overall seating by 25 percent.

Acting-Chair Lee opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Max Rice of 56 Fells Road said the project was an overall improvement of the current eyesore and would increase the general feel of the community.

SPEAKING IN OPPOSITION TO THE PETITION

Steve Iandoli of 369 Islington Street said he was also speaking for the residents at 371A and B Islington Street and 366 Islington Street. He said his parking spot shared an easement with the Getty station. He said the applicant wanted to expand the impact on that site and the neighborhood would be negatively impacted. He noted that the board denied similar variances earlier in the year for the Tuckaway Tavern. He said the area couldn't accommodate the size of that business and now the applicant wanted up to 250 people, five times what was allowed. He said it was rumored that the business would be a brewery, which would pose a risk to public health. He said that section of Islington Street was the most dangerous stretch of road in the city and having 250 people entering with cars in that area and seeking parking would cause risk to the neighbors and pedestrians.

Elizabeth Bratter of 159 McDonough Street said the proposal should be more respectful of the 30 residential units surrounding the property and she had concerns with alcohol, the occupancy number, the impact on parking, the garbage totes, and the fact that the variances should be considered separately. She said there was no hardship and that the proposal should be denied.

Sally Elshout of 311 Cabot Street said she had concerns about the design, privacy for the neighbors, parking, traffic, and the fact that more than 50 occupants would be detrimental to the community.

Lenore Bronson of 828 Woodbury Avenue said she agreed with the previous comments and was concerned that the applicant would not be providing less than half the required parking spaces. She said the extra cars would be going into the Cabot Street intersection, where there were already a lot of accidents, and the historic oak tree would be affected by the excavation.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Durbin said the variances could not be dealt with separately because they were interrelated. He said they were only asking for a total of 74 indoor and outdoor seats, not 250, and were asking for a smaller structure than allowed by the ordinance. He said they could not build it out and that the building had been designed to maximize the parking. He noted that Lexie's Joint's proposed outdoor area was much larger than the applicant's and it wasn't the board's purview to consider the outdoor seating. He said the addition in the rear would create less impact than the proposed Lexie's Joint and the business would involve baking, so they needed more space. He said the previous gas station traffic was much more intense than what they were proposing. He said site plan regulations were created to deal with technical engineering issues.

Project engineer Eric Weinrieb said the trash totes would meet the setback requirements. He said the site was safe for access and they had to keep the Islington Street access open due to the two easements. He said Cabot Street was the best way to bring traffic back out onto Islington Street because it was a safe intersection and no different than hundreds of other intersections in the city that were four-way intersections. He said their plans would be coordinated with the Islington Street project and would also keep the traffic open on the easement for the abutter.

Attorney Durbin clarified that the occupancy load for The Kitchen was 74 and was 98 for Liar's Bench.

Mr. Rossi read the ordinance's definition of occupancy load and asked why the outdoor seating wouldn't be part of the occupancy load. Attorney Durbin said that definition referenced the building code too, which drove the occupancy calculations. He said they were on flat ground, which was the same as a yard area or patio, and the intent was to have proper safety means to get out in case of fire and so on, but that their case was a bit different. He said the Conditional Use Permit process would address it.

James Beal (via Zoom) of 286 Cabot Street said he submitted a letter and thought a few issues seemed to have slipped through, like the fact that the oak tree wasn't mentioned in the site plans, which made him question the totality of the information provided by the applicant. He said the property was encumbered by deed restrictions, which should bear no weight in the request for variances. He said the approval for Lexie's included 16 parking spots and just a small side addition, but the current proposal would provide less than 50 percent of the required parking. He said the total number of persons that may occupy the inside of the building, including outdoors decks, at any one time was 50 people and that the proposal would cause issues with traffic flow.

The owner Jeff Dyer said they would not be a brewery but would be making bagels and wanted to be a good neighbor and make the site a neighborhood enhancement instead of leaving it an eyesore.

Elizabeth Bratter of 159 McDonough Street said the city had new regulations for outdoor seating by including the occupancy of it with the indoor seating. She said whatever was approved would stay with the property, which was the reason the neighbors were concerned.

Steve Iandoli of 369 Islington Street said he had to dodge cars speeding from Islington Street into the Cabot Street easement and thought there was no safe way in or out of the property.

Sally Elshout of 311 Cabot Street said a traffic study of the Cabot and Islington Streets intersection should be done.

No one else spoke, and Acting-Chair Lee closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Margeson said the traffic issues would be dealt with by TAC and the Planning Board. She said the board had no purview over it or over the parking spaces. She said she believed that 10.440, the variance for the occupancy load, did not apply to the project. She said they were proposing 43 interior seats and 31 exterior ones, and the 31 seats were also a CUP for the Planning Board. She said they were not under the board's purview because they were under the 50 threshold for the indoor use that was allowed by zoning. She didn't believe that the project required a variance for the occupancy load. She said the seating involved an outdoor deck, which she thought included the proposed addition, not the seating in front because that wasn't attached to the building, so she didn't think that 10.440 was applicable to the application. In response to Mr. Mannle's question, she agreed that Variance No. 3 was off the table. She said the zoning ordinance was very clear that outdoor dining was a CUP from the Planning Board.

DECISION OF THE BOARD

Ms. Margeson moved to **grant** the variances, with the exception of Variance No.3, as presented and advertised, seconded by Mr. Mannle.

Ms. Margeson said Variance No. 3 did not apply, and the other variances were for the secondary front yard setback, left yard setbacks, open space coverage, and the front line buildout. She said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said it was a CD4-L2 district that allowed for residential use on the ground floor and allowed for shallow front yards and shallow medium front yards. She said the applicant was looking for variable private landscaping and outside accessory parking, which would not have shallow yards. She said the purpose of the district was to have buildout, but there were special conditions to the property that counteracted that. She said the CD4-L2 district was meant to preserve and enhance and make for a human scale and a walkable district, and the petition met those criteria because it would preserve the Getty station. She said it would not alter the essential character of the neighborhood because there were many restaurants in the neighborhood and restaurants were allowed by right for up to 50 occupants. She said she did not believe that there were health, safety, and welfare considerations because it was a fairly minor impact allowed by

zoning. She said granting the variances would do substantial justice because the variances were primarily for changes to the setbacks and there was also parking allowed in the front of the restaurant, which Lexie's had, as well as a one-foot variance for the dumpster. She said she did not believe that the public would be benefited by upholding those requirements but thought there would be a substantial detriment to the applicant. She said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguished it from other properties in the area. She said she did not find the deed restrictions as compelling as the special conditions, but she said the easements around the property had to be respected, and that restricted the placement of buildings on the property. Owing to that, she said there was no real fair and substantial relationship between the public purposes of the ordinance and their application to the property. She said the proposed use is a reasonable one because it's a restaurant that is allowed occupancy load by right in the CD4-L2 district.

Mr. Stith suggested a stipulation noting that the design and location of the project may change based on the Planning Board and HD reviews and approvals, and Ms. Margeson agreed.

The motion was **amended** and reads as follows:

Ms. Margeson moved to **grant** the variances, with the exception of Variance No.3, as presented and advertised, with the following **stipulation**:

1. The design and location of the project may change based on the Planning Board and HDC reviews and approvals.

Mr. Mannle seconded. He said a restaurant in that location was a great idea but would impact the residences near it. He asked if the hours of operation could be restricted. Ms. Margeson said the Planning Board could do that. Mr. Rossi said the overriding consideration was that the property was an eyesore and many attempts had been made to make use of it but they all met untimely ends, so he thought that the proposed changes were necessary to make a viable space in that location.

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

- B.** The request of **David A. Sinclair and Nicole J. Giusto (Owners)**, for property located at **765 Middle Street** whereas relief is needed for construction of a new detached garage with dwelling unit above which requires the following: 1) A Variance from Section 10.513 to allow 3 principal dwellings on a lot where only 1 is allowed per lot. 2) Variances from Section 10.521 to allow a) a lot area per dwelling of 5,376 square feet where 7,500 is required per dwelling unit; and b) a 10 foot rear yard where 20 feet is required. Said property is shown on Assessor Map 148 Lot 37 and lies within the General Residence A (GRA) and Historic Districts. (LU-22-196)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, along with the project team which included owner David Sinclair. He said they proposed a new 4-car garage with an apartment and

office space above it. He said the driveway and parking area would be expanded and the exterior design would blend with the existing home and carriage house. He said they would go before the Planning Board and Historic District Commission for further review. He reviewed the criteria and said he had letters from seven neighbors who approved the project.

Mr. Rossi asked if the 10-ft setback to the rear yard was the one that bordered 733 Middle Street. Attorney Phoenix agreed and said the rear yard was the one deemed to be opposite the street address front. Ms. Margeson asked if the purpose for the new addition was to rent it out. Mr. Sinclair said the purpose was to park cars and offer someone a place to live. Ms. Margeson asked if there would be one office. Mr. Sinclair said the footprint was large enough to offer the opportunity to cut off one bay of the building and keep it an office or great room space with flexibility.

Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Margeson said she would not support the application because the zoning ordinance was very clear that there should be one dwelling unit per lot, and it seemed like the proposed building was not in character with the residential area and would be sort of a mini-complex. Mr. Rossi said the proposed building was a beautiful structure on a beautiful lot and would be a nice property in that location. He said he didn't see it as being detrimental to the public good. He said he was surprised that the residents of 733 Middle Street didn't have anything to say because they would have the most impact from the proximity to the lot line, so he presumed that they didn't object to the project. He said he would support it.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variances as presented, seconded by Mr. Mannle.

Mr. Rossi said granting the variances would not be contrary to the public interest because of the reasons he mentioned. He said it was a very nice development of the property and it resonated with the intention of the zone in terms of density of housing. He said substantial justice would be done because he didn't see any loss to the public by allowing this to proceed and thought the loss to the applicant would not be outweighed by any potential loss to the public. He said granting the variances would not diminish the values of surrounding properties because there were a lot of abutters who said they were comfortable with the project and the one abutter that he was concerned about remained silent, so he presumed that he had no objection regarding the impact on the value of his property. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the special condition of the property was that it was forcibly combined into one lot and if that

hadn't been done, there would be no issue with adding a dwelling unit in that spot. For those reasons he said he supported granting the variances. Mr. Mannle concurred and had nothing to add.

Acting-Chair Lee said he would not support the motion. He said one dwelling was allowed per zone, and three dwellings were a bridge too far. Mr. Stith asked if the maker of the motion would add a stipulation that the design and location may change because it had to go before the Planning Board and the Historic District Commission, and Mr. Rossi agreed.

The **amended** motion was:

Mr. Rossi moved to **grant** the variances as presented, with the following **stipulation**:

1. The design and location of the garage may change based on Planning Board and Historic District Commission review and approval.

Mr. Mannle concurred and had nothing to add. Mr. Mattson remarked that more than one freestanding building on a lot is generally sacrosanct in the single-family residence zone, but in this case, it was the GRA district and the applicant already had two dwellings on the lot. He said the fact that it was consistent due to the lot size and the number of dwellings per acre still met the intent of the ordinance.

The motion **passed** by a vote of 5-2, with Acting-Chair Lee and Ms. Margeson voting in opposition.

It was moved, seconded, and passed unanimously (7-0) to bypass the 10:00 rule and continue the meeting.

- C. The request of **Cornwall Properties LLC (Owner)**, for property located at **50 Cornwall Street** whereas relief is needed for the addition of a shed dormer which requires the following: 1) A Variance from Section 10.521 to allow a 3 foot right side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 144 Lot 2 and lies within the General Residence C (GRC) District. (LU-22-194)

SPEAKING TO THE PETITION

The applicant Charlie Moreno was present to review the petition and said they wanted to add a small dormer to fit a bathroom in. He said the affected neighbor approved of the project. He reviewed the criteria and said they would be met.

The board had no questions. Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** the variances as presented, seconded by Ms. Eldridge.

Mr. Mannle referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He referred to Section 10.233.23 and said substantial justice would be done, considering that the petition had already come before the board and they had granted the variances and were just doing a do-over for the bumpout for the bathroom. He noted that the board had granted a 1-ft side setback and were now doing three, so it was an improvement. He referred to Section 10.233.24 and said granting the variances would not diminish the values of surrounding properties because of the improvement. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguished it from the other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance provisions and the specific application of those provisions to the property. He said the proposed use was a reasonable one and thought it was a very small request for an adjustment of the original building plans for the accommodation of a bathroom.

Ms. Eldridge concurred and had nothing to add. The motion **passed** by unanimous vote, 7-0.

- D.** The request of **Lucia Investments LLC (Owner)**, for property located at **3020 Lafayette Road** whereas relief is needed to remove existing deck and stairs and construct new stairs to second floor behind the building and add new HVAC units which requires the following: 1) A Variance from Section 10.521 to allow an 8 foot side yard where 10 feet is required. 2) A Variance from Section 10.515.14 to allow an 8 foot setback for the HVAC units where 10 feet is required. Said property is located on Assessor Map 292 Lot 152 and lies within the Mixed Residential Business (MRB) District. (LU-22-197)

SPEAKING TO THE PETITION

Robert Currao of Lucia Investments was present to speak to the petition. He said the intent was to remove the huge deck and stairs and construct new stairs and that the only abutter was in approval. He said a 4/x5/ landing was proposed to replace the deck and noted that there was an existing 6' fence. He reviewed the criteria and said they would be met.

Mr. MacDonald asked if the building would be repurposed, noting that it had a large residential complex next to it. Mr. Currao said it was a mixed-use project, with a commercial kitchen and bath showroom downstairs and a 3-bedroom apartment upstairs. He said the condenser was 8'2" to the lot line and would replace the two condensers that didn't work properly. He reviewed the criteria.

The board had no further questions. Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Ms. Eldridge moved to **grant** the variances as presented, seconded by Mr. MacDonald.

Ms. Eldridge said what was being asked was simple, despite the fact that the building had been before the board several times. She said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the building needed a staircase and there were limited places where it would be put. She said it was a small change to a building that needed upgrading. She said substantial justice would be done because it would pose no harm to any neighbor and would be a benefit to the applicant. She said granting the variances would not diminish the values of surrounding properties because new stairs would replace the broken ones and there would be new HVAC units instead of the two that didn't work properly, which would improve the property. She said the property had the special condition of having no other place to put the items without making them unusable, noting that they would either infringe on the parking spots or not work with the building. She said that not granting the variances would not benefit anyone else in the neighborhood, and for all those reasons, she moved to grant the variances.

Mr. MacDonald concurred. He said had been watching the building since 1990 when it was a weed lot, and now it was something different. He said the improvements would be something good for the owner and the community and would be a win-win.

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

E. REQUEST TO POSTPONE The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE** (LU-22-199)

DECISION OF THE BOARD

It was moved, seconded, and passed by unanimous vote (7-0) to **postpone** the petition to the November 15 meeting.

F. The request of **Jessica Kaiser and Andrew McMahon (Owners)**, for property located at **232 Wibird Street** whereas relief is needed for the demolition of existing structures and construction of a new dwelling with attached garage which requires the following: 1) Variances from Section 10.521 to allow a) 66.5 feet of frontage where 100 feet is required; b) a 7 foot right side yard where 10 feet is required; and c) a 12 foot front yard where 15 feet

is required. Said property is located on Assessor Map 149 Lot 14 and lies within the General Residence A (GRA) district. (LU-22-198)

SPEAKING TO THE PETITION

Project architect Tom Emerson was present on behalf of the applicant and stated that the plan was to demolish the existing buildings and build a new single-family home that would better fit into the neighborhood and would diminish the existing nonconformances. He said the main building had hazardous materials and the current configuration didn't work for a young family. He said the garage would be moved forward to eliminate the vehicular/pedestrian intersection and the need for backing out onto Wibird Street. He reviewed the criteria and said they would be met.

The board had no questions, and Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variances as presented, seconded by Mr. Mannle.

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance and would not alter the essential character of the neighborhood in a negative way. He said it would be a substantial improvement over the existing structures and would be more in keeping with the neighborhood. He said substantial justice would be done by improving the property and not creating any impact to the general public, and there would be no harm to the public that would outweigh the harm to the applicant if the application were to be denied. He said granting the variances would not diminish the values of surrounding properties because there would be a substantial improvement to the appearance of the property and the structures on it. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special condition of being inherently noncompliant to the 66-1/2' frontage, which forced all the other variances that were required in order to accomplish the project.

Mr. Mannle concurred and said all the proposed changes were less nonconforming than the current condition. Ms. Margeson said she would support the motion, even though she thought it was a shame to lose the existing structure, but it would make the property less nonconforming and the purview of the board was the zoning.

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

- G.** The request of **Thomas M. Hammer Revocable Trust of 2015 (Owner)**, for property located at **219 Sagamore Avenue** whereas relief is needed to add an additional dormer to a previously approved garage which requires the following: 1) A Variance from Section

10.573.20 to allow a 9' rear yard where 15' is required for the dormer. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 221 Lot 19 and lies within the General Residence A District. (LU-22-186)

SPEAKING TO THE PETITION

Project architect Tony Fallon was present on behalf of the applicant. He stated that the garage was rotted and that it was previously proposed to the Board to build a new garage further away from the side setbacks with less lot coverage. He said the previous proposal had one shed dormer but a second dormer was now proposed. He reviewed the criteria and said they would be met.

Mr. Rossi asked how the addition of the dormer would change the rear yard setback from one foot to the proposed nine feet. Mr. Fallon said that was the delta between the old garage and the new one and that nothing in the footprint would change.

Acting-Chair Lee opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Lee closed the public hearing.

DECISION OF THE BOARD

Mr. Mannle moved to **grant** the variances as presented, seconded by Ms. Eldridge.

Mr. Mannle noted that the board had already seen and approved the proposal and that it was more of an administrative variance by just adding a second dormer to the garage. He referred to Sections 10.233.21 and 22 of the ordinance and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. Referring to Sections 10.233.23 and .24, he said granting the variances would do substantial justice and would not diminish the values of surrounding properties but would actually improve them. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property has special conditions that distinguished it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance provisions and the specific application of those provisions to the property. He said the proposed use is a reasonable one and, like the previous application, the lot will become less nonconforming. For those reasons, he said the variances should be granted. Ms. Eldridge concurred and had nothing to add.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 11:15 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary