

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

**7:00 P.M.**

**May 17, 2022**

**MEMBERS PRESENT:** Arthur Parrott, Chair; Jim Lee, Vice Chair; David MacDonald, Beth Margeson, Paul Mannle, and Phyllis Eldridge

**MEMBERS EXCUSED:** Thomas Rossi

**ALSO PRESENT:** Peter Stith, Planning Department

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Chairman Parrott called the meeting to order at 7:00 p.m. He noted that one petition was withdrawn by the applicant and that three items were postponed.

*It was moved, seconded, and **passed** unanimously (6-0) to take out of order and **postpone** Old Business Items C, D, and E.*

**I. APPROVAL OF MINUTES**

A) Approval of the minutes of the meetings of April 19, 2022.

The April 19 minutes were **approved** as presented by unanimous vote, 6-0.

**II. OLD BUSINESS**

Ms. Margeson recused herself from the following petition, which left only five members to vote. Attorney Chris Mulligan representing the applicant said he would go ahead with the request.

**A. 189 Gates Street** – Request for Rehearing (LU-22-30)

**DECISION OF THE BOARD**

*Vice-Chair Lee moved to **deny** the Request for Rehearing, seconded by Mr. Mannle.*

Mr. Mannle said there was no prior attempt by the applicant to say that the board did anything wrong or anything was in error. He said the board made a decision to deny the petition and that he didn't see the point of rehearing it. Vice-Chair Lee concurred and said the board explored the petition thoroughly and there was lots of input from both sides.

*The motion **passed** by unanimous vote, 5-0.*

Ms. Margeson resumed her voting seat.

- B. George and Donna Pantelakos - 138 Maplewood Avenue** request a 1-Year extension to the BOA approval of the garage renovation and expansion granted on June 16, 2020. (LU-20-71)

## **DECISION OF THE BOARD**

*Mr. Mannle moved to **grant** the one-year extension, seconded by Ms. Margeson.* Mr. Mannle said it was a simple request and that one-year extensions were routinely granted.

*The motion **passed** by unanimous vote, 6-0.*

- C. REQUEST TO POSTPONE** The request of **Francis X. Bruton, (Attorney for Appellants)**, for Appeal of Administrative decision that the merged lot at **1 Congress** is not subject to the height allowances (2 stories, 4th short, 45 feet in height) pursuant to Map 10.5A21B and as permitted pursuant to Section 10.5A21.22(a) & (c) of the Zoning Ordinance. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. **REQUEST TO POSTPONE** (LU-22-12)

Chairman Parrot said it was an appeal of an administrative decision made by the Planning Board and a request to grant variances. He said the applicant requested that both items be postponed to the July 19 meeting.

## **DECISION OF THE BOARD**

*Mr. Mannle moved to **grant** the request to postpone for both items to the July 19 meeting as requested, seconded by Ms. Eldridge.*

Mr. Manne said it was a routine request. Ms. Eldridge concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

- D. REQUEST TO POSTPONE** The request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 40' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. **REQUEST TO POSTPONE** (LU-22-12)

## **DECISION OF THE BOARD**

*Mr. Mannle moved to **grant** the request to postpone, seconded by Ms. Eldridge.*

Mr. Manne said it was a routine request. Ms. Eldridge concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

**E. REQUEST TO POSTPONE** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing commercial structure and construct 5 new single-family dwellings which requires the following: 1) A Variance from Section 10.513 to allow 5 principal structures on a lot where only 1 is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 22,389 square feet where 1 acre per dwelling is required. Said property is shown on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. **REQUEST TO POSTPONE** (LU-22-57)

## **DECISION OF THE BOARD**

*Mr. Mannle moved to **grant** the request to postpone, seconded by Vice-Chair Lee.*

Mr. Mannle said it was a routine request and should be granted. Vice-Chair Lee concurred and said historically the board always granted the first request to postpone.

*The motion **passed** by unanimous vote 6-0.*

**F. WITHDRAWN** The request of **Randi and Jeff Collins (Owners)**, for property located at **77 Meredith Way** whereas relief is needed to construct a second free-standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow a second principal structure on a lot. 2) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District. **WITHDRAWN** (LU-22-61)

The petition was **withdrawn** by the applicant.

**G.** The request of **64 Vaughan Mall LLC (Owner)**, for property located at **64 Vaughan Street** whereas relief is needed for the addition of a rooftop penthouse which requires the following: 1) A Variance from Section 10.5A43.30 and Map 10.5A21B to allow a building height of 51'6" where 42' is the maximum allowed for a penthouse. 2) A Variance from Section 10.1530 to allow a penthouse with a 9.5' setback from the edge of the roof where 15 feet is required. Said property is shown on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD-5) and Downtown Overlay and Historic Districts. (LU-22-65)

## **SPEAKING TO THE PETITION**

Attorney John Bosen representing the applicant was present and introduced members of his team, which included Novocure Executive Chair Bill Doyle, project architect Mark Mueller, and contractor Steve Wilson. Attorney Bosen gave a brief history of Novocure and the building and said the plan was to renovate the building for office use. He said they proposed adding a structure to the roof to provide training and classroom space as well as access to private outdoor space. He noted that the flat roof was flat was a logical place to construct the recessed pavilion and that the additional height would still be shorter than any of the surrounding buildings and would be set back and barely visible. He explained why the variances were needed. Executive Chair of Novocure Bill Doyle briefly explained Novocure's history and said the pavilion was needed to train their constituents and to have a cafeteria with outdoor space. Project architect Mark Mueller reviewed the context, setbacks and dimensions. He said the addition would have a mansard expression that would act as a foil for most of the mass. He said the penthouse would have a lot of transparency to make it feel more like a crystalline object on the rooftop. Attorney Bosen reviewed the criteria in detail and explained why they would be met. He said the proposed height wasn't out of line considering that the building had tall floor-to-ceiling heights and was only three stories with a penthouse.

Mr. Mannle said Attorney Bosen noted that if the building was torn down and built to the current zoning, it would be the same height that was requested, yet the zoning stated that the building had to be three stories or forty feet and an extra two feet for a penthouse. Attorney Bosen said there would be three stories and the mansard roof. Mr. Mannle said the building would be 51 feet, not 40. Attorney Bosen said the zoning allowed a mansard roof on three stories. Mr. Wilson said he was the former owner of the property and previously got the building approved as a mixed-use project. He said when he bought the building, it had 14 feet floor to floor when the minimum allowed by zoning was 12 feet, so two feet were squandered; and the next two levels were 12 feet, so 2 feet on each of those levels were squandered. He said all the resulting extra feet was like a bonus fourth floor. Mr. Mannle said the mansard roof was in the new building to the right and the penthouse was for the Cabot Building, which didn't have a mansard roof. Mr. Wilson said the hardship was that the Hanover Street elevation was much lower than the Vaughan Mall site by 3-4 feet but when the buildings that were touching were measured, it was really one building, so they lost a few feet in the average grade.

Ms. Margeson asked Attorney Bosen if he thought Fisher v. Dover applied. Attorney Bosen said it was a different project with a different use and design, so he didn't feel that Fisher v. Dover was applicable. Mr. MacDonald said the board previously considered the project at length with a great deal of discussion amongst themselves and input from residents, and the conclusion was to deny the project at that time, but the applicant was back. He asked what was so different that would justify the project now. Attorney Bosen said the prior project was a mixed-use one and had a fourth story over the entire building, but now they were just seeking the auditorium penthouse over a portion of the building. He said the previous project also had an outdoor park that they were no longer dealing with. He said the building would be entirely office use, which was permitted in the zone, and that they just wanted a penthouse over a portion of it.

Mr. Mannle said the previous application that had residential use and park space was denied, and the applicant was flipping the use to strictly business, with no residential and no outdoor space, but wanted the cafeteria on the roof. Attorney Bosen said the park was eliminated because the board had thought it was too small and not applicable. H said the only thing that had changed was the penthouse for the applicant's use. Mr. Mannle said the use had changed and that's why the applicant was back. Attorney Bosen disagreed and said they were permitted by right to do office space in that zone and were now seeking the penthouse.

Chairman Parrott opened the public hearing.

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

**Note:** At this time in the meeting, Devan Quinn phoned in via Zoom and said she had her hand raised for Item 1 but wasn't given a chance to speak. Mr. Stith said it was only a discussion among the board, with no public comment.

No one spoke in favor of the petition.

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

Alison Griffin of 25 Maplewood Avenue said she was an abutter and wondered how a new owner thought they could apply for a new variance when one was previously denied. She said the petition didn't meet the criteria because it was contrary to the public interest. She said the mansard roof was 15 above the maximum height allowed. She said there was no hardship because the applicant bought the property knowing what they were buying. If approved, she said it would set a precedent for height. She said the penthouse would impact the surrounding property values. She said the variances were applied for immediately after she bought her property and that her views would be impacted.

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

Attorney Bosen showed the view that Ms. Griffin had from her unit and said it was very minimal and would not block her view.

Ms. Griffin showed a view of where she would sit and look at the building, pointing out that the elevator shaft would be higher and there would be more mechanical equipment on the roof. She said she didn't think the applicant's drawings were accurate.

Mr. Wilson said he was the applicant for the 4<sup>th</sup> story penthouse before, noting that it was a flat-roof structure and that the zoning required building within five feet of the property line. He emphasized said no fourth floor would have gone on the previous building unless the park was given away. He said he didn't apply for more building area then and that it was a different purpose to have higher condos. He said he told Ms. Griffin when she bought her place that the building next door would have three stories, yet her building was built under the 3-story zoning and she lived on the fourth story. He said a lot of what she wasn't saying was accurate and that

she was ignoring the vanishing point of the applicant's building. He said it was a new application for a new use and that the plans were accurate. He said the post-development buildings were all taller, including Ms. Griffin's building that higher than their proposed building by 4-5 feet.

Ms. Griffin said the proposed building was above her story. Vice-Chair Lee asked what she was told about the applicant's building when she bought her building. Ms. Griffin said she was told the applicant's building would be a 3-story building and that it was also noted in the newspaper.

No one else spoke, and Chairman Parrott closed the public hearing.

## **DISCUSSION OF THE BOARD**

Ms. Margeson asked Mr. Stith if the previous zoning relief was for the fourth floor, and Mr. Stith agreed and said it was also to exceed the maximum front yard setback on Hanover Street. Ms. Margeson said it sounded like a Conditional Use Permit (CUP) situation to her. Mr. Stith said the applicant had proposed to give the city a park in exchange for the extra height. Vice-Chair Lee was the applicant had proposed a small park in exchange for a bonus half; he said to him, it was the 'same horse pulling a different buggy'. Ms. Margeson said the board had to address whether or not Fisher v. Dover applies.

*Ms. Margeson moved that Fisher v. Dover did not apply and Mr. Mannle seconded.*

Ms. Margeson said Fisher v. Dover required the board to address whether or not they were getting the same application and the applicant couldn't go back for a second bite of the apple once the variance was denied. She defined what Fisher v. Dover was and said the reason she was making the motion was that the previous relief, although it was identical for 52 feet, was for a fourth floor and not a penthouse and was for mixed-use residential units. She said now it was clearly a penthouse for conference space and could not exceed 50 percent of the area of the story below. She said it was at 40 percent and was a different application and that Fisher v. Dover did not apply. Mr. Mannle concurred.

*The motion **passed** by unanimous vote, 6-0. Mr. Lee noted that the City Staff had also concurred.*

Vice-Chair Lee said in the previous iteration of the project, the applicant wanted a half variance by giving the city a small park in front of the building. He said there was a lot of discussion that the park wasn't enough of a justification to grant the variance, so it was denied. He said even though Fisher v. Dover would not apply in this case, it was basically the same horse pulling a different buggy and that the applicant was trying to bootstrap the mansard roof item to get the crystal place on the other building adjacent to it. Mr. Mannle said the applicant knew that the Cabot House was already 40 feet tall and that three stories or 40 feet and an extra two feet for the penthouse was allowed by zoning. He said the board would be granting a fourth story because the difference between 40 feet and 53 and a half was another story; it was going up another 11 and a half feet, which was a bridge too far. He said the character-based zoning limited building heights on all downtown buildings because of the immediate neighbors and that there was no objection when it was enacted to the 40-ft height limit. He said he didn't see where the spirit of

the ordinance was carried out by granting an 11.5 foot upgrade. Ms. Margeson said she couldn't support the project because it didn't meet the spirit and intent of the ordinance, which was to regulate building heights. She said it was clear that the applicant didn't want the building to go past 40 feet and had even included the contemplation of a penthouse and said they'd give an extra two feet, but there was a real intention to figure out the building height in that particular zoning district and she felt that the project directly contradicted the zoning ordinance as written. Chairman Parrott said he remembered that the board was practically unanimous that the park would be of little or no use due to its location, size, and the likelihood of people finding it useful. Ms. Eldridge said she didn't see how the proposed height was contrary to the public interest because the city was growing and the building heights were changing little by little. On the other hand, she said she had trouble seeing the hardship because it was hard to imagine that there couldn't be room for meeting space within the large building without needing a penthouse.

### DECISION OF THE BOARD

*Ms. Margeson voted to **deny** the variances for the petition as presented and advertised, seconded by Vice-Chair Lee.*

Ms. Margeson said the spirit of the ordinance was not observed and the applicable provision of the zoning ordinance only allowed for three stories or forty feet and an extra two feet for the penthouse. She said the applicant was proposing 52 feet. She said the penthouse had to be set back at least 15 feet from the edge of the roof and it was nine feet on one side, so it wasn't a slight variation of the ordinance but was in direct conflict with something that was enacted. Vice-Chair Lee concurred, noting that a little bit here and there would be added and would just continue and eventually there would be a significant amount of congestion and overdevelopment, which would be inconsistent with the spirit of the ordinance.

*The motion **passed** by a vote of 5-1, with Chairman Parrott voting in opposition.*

### III. NEW BUSINESS

- A. The request of **Adam Fitzpatrick and Emily Smith (Owners)**, for property located at **96 Sparhawk Street** whereas relief is needed to add an addition on the existing dwelling and an addition to a shed which requires the following: 1) Variances from Section 10.521 to allow a) a 4 foot right side yard where 10' is required; and b) an 8 foot front yard where 15 feet is required. 2) Variances from Section 10.573.20 to allow a) a 4 foot right side yard where 9.5 feet is required; and b) a 7 foot rear yard where 9.5 feet is required. 3) 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 159 Lot 16 and lies within the General Residence A (GRA) District. (LU-22-42)

### SPEAKING TO THE PETITION

The applicant Adam Fitzpatrick was present and said they had three young children and needed more space. He said the addition for the shed was to have more storage space. He said the home's exterior would be greatly improved and that his neighbors were all in support. He reviewed the criteria and said they would be met. He noted that the house already encroached on the lot lines and that the current deck structure would be removed for the addition.

Ms. Margeson asked if the wall in front of the property was shared by the applicant and his neighbors, and Mr. Fitzpatrick agreed and said the city built it some time ago. He said he wasn't sure what would happen to the wall but that the water and sewer lines went under it and that it would have to be replaced. Mr. Mannle asked what the shed addition was for. Mr. Fitzpatrick said it was for lawn equipment, tool, toys, and so on.

Chairman Parrott opened the public hearing.

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

No one spoke, and Chairman Parrott closed the public hearing.

### **DECISION OF THE BOARD**

*Ms. Margeson moved to **grant** the variances for the application as presented and advertised, seconded by Ms. Eldridge.*

Ms. Margeson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the setback requirements for the application's front, right, and rear yards was to ensure the movement of light and air and the public's health, safety, and welfare. She said the application was bringing forward pre-existing nonconformities on the primary front yard of eight feet and the primary right yard of 4 feet. She said the rear yard was being reduced from 13 feet to seven feet, but the lot was shorter in depth than it was supposed to be per the ordinance and the spirit and intent, and bringing forward these two pre-existing nonconformities and adding, in a very minor way, to the third nonconformity did not violate the public interest or the spirit to the ordinance. She said substantial justice would be done because denying the variances would not be offset by any gain to the public. She said granting the variances would not diminish the values of surrounding properties because improvements to a property generally raised property values immediately around it. She said the application met the hardship test, even though she didn't find that the property itself had special conditions because all the properties in the area were fairly small and they all had a 50-ft lot depth whereas the zoning called for 70 feet. She said the applicant's property couldn't reasonably be used in strict conformance with the ordinance, and a variance was therefore necessary to enable a reasonable use of it. She said the shed in the back where it encroached more into the rear yard setback was permitted for a residential use, and the property itself was 20 feet shorter than it should be in lot depth so it did meet the unnecessary hardship test under those conditions. Ms. Eldridge concurred and had nothing to add.



*The motion **passed** by unanimous vote, 6-0.*

- B.** The request of **The Lonzoni Family Revocable Trust (Owner)**, for property located at **411 South Street** whereas relief is needed to demolish existing garage and construct new attached garage which requires the following: 1) Variance from Section 10.521 to allow a 6 foot rear yard where 20 feet is required. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the Ordinance. Said property is shown on Assessor Map 112 Lot 55 and lies within the General Residence A (GRA) District. (LU-22-67)

### **SPEAKING TO THE PETITION**

Project architect Jeremiah Johnson was present on behalf of the owners and said they wanted to replace the garage with a new one and also build a small breezeway at the rear of the property to connect the new garage with the house. He noted that a prior 2017 petition brought before the board included a second-story Accessory Dwelling Unit (ADU) but that the applicant now wanted just a single-story garage. He said the garage's reorientation and modernization would bring a significant benefit to the owners without impeding on the abutters and would be more compliant to zoning. He reviewed the dimensions and setbacks and said only two variances were required instead of the previous four. He reviewed the criteria and said they would be met.

Ms. Margeson asked why Fisher v. Dover didn't apply. Mr. Johnson said there was no ADU being applied for and the garage's orientation was different.

Chairman Parrott opened the public hearing.

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

Wendy Rolfe of 419 South Street said the area was busy and that she appreciated the communication between the applicant and the neighbors and that all the neighbors appreciated the changes that were made from the 2017 application. At that time, she said she and her husband had been the most affected abutter because the ADU would have looked right into their bedroom, but the new design sought fewer variances and the garage's reorientation would make it less impactful to them. She said she was concerned that the garage would be a bit of a tall straight wall on her property line and thought it could be moved forward a few feet however.

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

No one spoke, and Chairman Parrott closed the public hearing.

Mr. Johnson said he submitted five letters of support from the neighbors, two of which had spoken in opposition to the prior application.

## DECISION OF THE BOARD

*Ms. Eldridge moved to **grant** the variances for the application as presented, seconded by Vice-Chair Lee.*

Ms. Eldridge said the variances requested were minor, considering that the garage was at the same setback and it would be an overall improvement to the property. She said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. She said there was no perceived detriment on the abutting properties and very little change, and the variances were not creating something new that hadn't been lived with for many years. She said substantial justice would be done because it was a modest addition, and the values of surrounding properties would not be diminished because it would be a nice new addition and a new garage. She said literal enforcement of the ordinance would result in an unnecessary hardship due to special conditions, including the curve on South Street, and the garage would allow a straight shot out into the street and let the owners make better use of their property. For those reasons she thought the variances should be granted. Vice-Chair Lee concurred. He said that almost all the applications for porches, garages, second floors and so on that the board had granted in the past made a huge positive impact to the neighborhoods. He said he remembered that the proposed garage in the 2017 petition was massive compared to what was proposed now. Mr. Mannle said the proposed project would make the existing nonconformance less non-conforming and that he would support the motion. Ms. Margeson said *Fisher v. Dover* did not apply in this case because the ADU was not part of it. Chairman Parrott agreed.

*The motion **passed** by unanimous vote, 6-0.*

- C. The request of **Andrea Hurwitz (Owner)**, for property located at **129 Aldrich Road** whereas relief is needed for a second floor addition with rear addition and deck which requires the following: 1) Variance from Section 10.521 to allow a 5.5 foot left side yard where 10 feet is required. 2) 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 153 Lot 35 and is located within the Single Residence B (SRB) District. (LU-22-71)

## SPEAKING TO THE PETITION

Owner/applicant Andrea Hurwitz was present and said the addition would add three bedrooms and a master bath on the second floor, and the rear addition would have a home office with a deck off the back. She said they would only raise the house's roof 23 inches to keep it a simple bungalow but to give it more function. She reviewed the criteria and said they would be met. She noted that the abutter submitted a letter in support of the petition.

There were no questions from the board, and Chairman Parrott opened the public hearing.

## SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chairman Parrott closed the public hearing.

## DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variances for the petition as presented, seconded by Vice-Chair Lee.*

Mr. Mannle said the variance requests were driven by the property and they would not be contrary to the public interest or the spirit of the ordinance because the existing 5-1/2' left yard was exactly what was proposed. He said granting the variances would do substantial justice and the values of surrounding properties would not be diminished and would most likely rise. He said literal enforcement of the ordinance would result in an unnecessary hardship. For those reasons, he said he would support it. Vice-Chair Lee concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

- D.** The request of **Donald Lowell Stickney III (Owner)**, for property located at **213 Jones Avenue** whereas relief is needed for the addition of a second driveway which requires the following: 1) Variance from Section 10.1114.31 to allow a second driveway on a lot where only one driveway is allowed. Said property is located on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) District. (LU-22-34)

## SPEAKING TO THE PETITION

Attorney Christopher Mulligan was present on behalf of the applicant, with the applicant Donald Stickney. Attorney Mulligan said the request was for a second driveway on a single lot to accommodate a proposed ADU, and the proposal was to construct a new primary dwelling and convert the existing house to an attached ADU. He noted that the petition, if approved, would go before the Planning Board for a CUP for the ADU and also a secondary CUP for some work within the wetlands buffer. He explained that the second driveway was needed due to certain characteristics of the property and existing dwelling. He said a new State-approved septic system was needed for the primary dwelling that would be placed in-between both structures. He said the property was burdened by the wetlands buffer so it had to be sited closer to Jones Avenue and that was the reason relief was needed for the second dwelling. He reviewed the criteria and emphasized that the special conditions were the existing built environment on the property, the irregular shape of the lot, and the wetlands. He said there was more than twice the amount of frontage on Jones Avenue that required a second driveway that would not be out of character. Mr. Mannle asked where the current septic tank was and where the new one would be. Mr. Stickney said the existing septic system exited the house to a field, and the new septic system would have a pumping tank that both homes would empty into. He said locating it between both buildings was the only feasible location, given the strict State approval criteria.

Chairman Parrott opened the public hearing.

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

No one spoke, and Chairman Parrott closed the public hearing.

**DECISION OF THE BOARD**

*Vice-Chair Lee moved to **grant** the variance for the petition as presented and advertised, and Ms. Margeson seconded.*

Vice-Chair Lee said he was familiar with the property and that there was plenty of room to do what was proposed. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the proposed use would not conflict with any implicit or explicit purposes of the ordinance and would not alter the essential characteristics of the neighborhood or threaten the public's health, welfare, or safety. He noted that there was a large metal recycling facility directly across from the property as well as mixed-use and residential that would not be diminished. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions of being burdened by the wetlands and the topography of the land that drove the need for an additional driveway, so there was no fair and substantial relationship between the purpose of the ordinance and its provisions to the application. He said the proposed use was a reasonable one.

Ms. Margeson concurred. She said it was a huge property and a lot of it wasn't developable, but it was in the Single Residence B zone which allowed for low to moderate uses, and there was more than enough for that. She said the city had decided that detached ADUs were allowable under the zoning ordinance, and this would allow the applicant to make use of a detached ADU, assuming that the Planning Board approved it. She said it was a reasonable use.

*The motion **passed** by unanimous vote, 6-0.*

- E.** The request of **Ann Genevieve Becksted Trust of 2004 (Owner)**, for property located at **9 Schurman Avenue** whereas relief is needed to add a 6' x 25' two story addition and side porch which requires the following. 1) A Variance from Section 10.521 to allow a 22 foot front yard where 30 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 located on Assessor Map 260 Lot 158 and lies within the Single Residence B (SRB) District. (LU-22-84)

**SPEAKING TO THE PETITION**

Project contractor Rick Becksted Sr. was present on behalf of his daughter, the applicant Genevieve Ann Becksted Muske. Mr. Becksted said the house was very small and the addition was needed because there was no room for an inside staircase. He said they also wanted to add a covered porch to mitigate moisture problems. He said there wasn't a way to make the lot conforming due to its size and that most of the neighbors had similar second stories. He reviewed the criteria and gave the board a half-dozen letters of support from the neighbors. The owner

Genevieve Ann Musk said there were letters of approval from immediate abutters and photos of other properties in the neighborhood with similar additions and porches.

There were no questions from the board. Chairman Parrott opened the public hearing.

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

Shawn Muske said he was the co-owner and the addition would replace the existing deck. He said the hardship was that he and his wife were required to maintain home offices due to COVID, which was difficult in their small home.

Genevieve Becksted Muske said it would be helpful to expand in order to maintain the house and operate two small offices.

Sloan Muske, the applicants' daughter, said she wanted a bigger bedroom that she could have room to dance in and room for her friends to visit.

No one else spoke, and Chairman Parrott closed the public hearing.

### **DECISION OF THE BOARD**

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

Mr. MacDonald said the applicant did a great job of explaining why the variances should be granted and how it met the criteria. He said granting the variances would not be contrary to the public interest, noting that the public had a very limited interest in the property that the proposal didn't infringe upon. He said the spirit of the ordinance would be observed because the ordinance had a lot of purposes to lessen congestion, promote health and general welfare, provide adequate light and air, and so on, and that the ones that were applicable to the applicant were satisfied fully. He said granting the variances would do substantial justice because it was perfectly just to allow people to do with their property what was necessary to lead their lives. He said the values of surrounding properties would not be diminished because the project would not impose anything on them and certainly wouldn't diminish their values. He said literal enforcement of the ordinance would result in unnecessary hardship on the property owner because he was about to take a big step and improve his family's lives, which was something the ordinance didn't intend to get in the way of. Ms. Eldridge concurred and said the applicant would get a lot of house for a very small change in the front yard setback and that they were asking very little from the board. She said one should be allowed to dance in her bedroom.

Mr. Stith said the whole house was going up two stories, and the 7-ft rear yard should be advertised but it wasn't. He suggested stipulating that the rear yard shall be seven feet.

The makers of the motion agreed. The **amended** motion was as follows:

*Mr. MacDonald moved to **grant** the variances for the application as presented, seconded by Ms. Eldridge, with the following stipulation:*

- 1. The rear yard shall be seven feet.*

*The motion **passed** by unanimous vote, 6-0.*

**F.** The request of **Andrew DiPasquale (Owner)**, for property located at **80 Fields Road** whereas relief is needed to construct rear addition and enclose existing carport to create sunroom with front porch which requires the following: 1) Variances from Section 10.521 to allow a) a 26 foot rear yard where 30 feet is required; b) a 9 foot right side yard where 10 feet is required; c) a 9 foot left side yard where 10 feet is required; d) a 23 foot front yard where 30 feet is required; and e) 29% building coverage where 20% is the maximum allowed. 2) 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 171 Lot 8 and lies within the Single Residence B (SRB) District. (LU-22-76)

### **SPEAKING TO THE PETITION**

The applicants Drew DiPasquale and his wife Katie were present to speak to the petition. Mr. DiPasquale said they wanted to add an addition on the back of the house and also add a sunroom/mudroom off the side. He said the design included a small front porch that extended 5-6 feet and the overall building coverage would be increasing to 29 percent. He reviewed the criteria and said they would be met. Ms. DiPasquale said she was expecting and her current guest room/office would become the nursery, so the board's approval of the addition would help.

Mr. Mannle asked Mr. Stith if the original carport was included in the existing building coverage, and Mr. Stith agreed.

Chairman Parrott opened the public hearing.

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

No one spoke, and Chairman Parrott closed the public hearing.

### **DECISION OF THE BOARD**

*Vice-Chair Lee moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mannle.*

Vice-Chair Lee said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the project would not conflict with the implicit and explicit purposes of the ordinance and would not threaten the public's health, safety, or welfare. He said substantial justice would be done because the benefit to the applicant was not outweighed by any

harm to the general public or other individuals. He said granting the variances would not diminish the values of surrounding properties but would improve them. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special condition of the size of the property, so there was no fair and substantial relationship between the purposes of the ordinance and its application to the property. He said it was a reasonable request that should be granted. Mr. Mannle concurred. He said his only concern at first was the building coverage going to 29 feet but that he was comfortable with it. Ms. Eldridge said she had always loved the applicant's street because all the additions showed that people loved living there.

*The motion **passed** by unanimous vote, 6-0.*

**G. The request of Pamela J. Katz Revocable Trust (Owner), for property located at 462 Lincoln Ave, Unit 4** whereas relief is needed to install a generator which requires the following: 1) A Variance from Section 10.515.14 to allow a 6 foot setback where 10 feet is required and to allow the generator to be closer to the street than the principal structure. Said property is located on Assessor Map 133 Lot 20-4 and lies within the General Residence A (GRA) District. (LU-22-77)

#### **SPEAKING TO THE PETITION**

The applicant wasn't present.

#### **DECISION OF THE BOARD**

*Mr. Mannle moved to **postpone** the petition to the May 24 meeting, seconded by Vice-Chair Lee. The motion **passed** by unanimous vote, 6-0.*

#### **IV. OTHER BUSINESS**

There was no other business.

#### **V. ADJOURNMENT**

The meeting was adjourned at 10:08 p.m.

Respectfully submitted,  
Joann Breault  
BOA Recording Secretary