

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

**MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS**

**7:00 p.m.**

**September 25, 2012**

**Reconvened from September 18, 2012**

**MEMBERS PRESENT:** Chairman David Witham; Vice-Chairman Arthur Parrott;  
Susan Chamberlin; Derek Durbin\*; Christopher Mulligan;  
Alternate, Patrick Moretti

**MEMBERS EXCUSED:** Alternate, Robin Rousseau

\*Not present for full meeting

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Chairman Witham announced that Mr. Durbin would be delayed and Mr. Moretti would be sitting in as a voting member.

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**III. PUBLIC HEARINGS**

(The following was approved as an Excerpt of Minutes at the  
November 20, 2012 Board of Adjustment Meeting.)

- 7) Case # 9-7  
Petitioner: Blueberry Lafayette Investors & Edward Walsh, owners, McCauley Wholesale,  
applicant  
Property: 3605 Lafayette Road  
Assessor Plan 298, Lot 2  
Zoning District: Gateway  
Description: Allow display of vehicles 5' from the front property line.  
Request: 1. A Special Exception under Section 10.440, Use #20.61 to allow outdoor  
storage of vehicles.  
2. A Variance from Section 10.533 to allow a vehicle display area to be located  
5'± from the front property line where no display or storage area shall be  
located less than 80' from the centerline of Lafayette Road or 30' from the  
sideline of Lafayette Road, whichever is greater.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Charles McCauley stated that he was representing McCauley Wholesale, the applicant. He referred to his submitted packet, which included some photographs and his explanation and asked if there were any questions. When Chairman Witham suggested that he walk the Board through the packet and the reasons why the variance and special exception should be granted, Mr. McCauley stated that the problem could be seen in the photographs. Motorists were almost on top of the property before they could see there were vehicles. There were almost some accidents as passersby stopped to look. He identified pictures 1 and 3 as the view from north and south with vehicles parked 30' back as they were currently. Pictures 2 and 4 were the same views but with a vehicle parked where they would like to have vehicles parked. Chairman Witham asked if the bottom photograph on page 2 was what was allowed and the photo on the bottom of page 4 was what they wanted. Mr. McCauley stated that pages 1 and 3 showed both approaches with the vehicles parked where they currently were. For pages 2 and 4, he had parked a white truck where they would like to have all vehicles parked so there would be a better view, particularly from the south.

Chairman Witham asked if there was anything more he would like to add about business in general or the numbers of cars. Mr. McCauley stated that the economy was terrible and they were hoping that the exposure would help sell more vehicles. If the vehicles were exposed up front, there would be more of a chance to make a living. In response to further questions from Chairman Witham, he stated that the building behind him was construction and septic systems. He stated that the predominant use of the lot was used cars. The large building in the photograph was moving and storage and was the next lot over. There were two buildings behind the vehicles probably 500 to 800 feet back.

Mr. LeMay asked if his building was #3605 and Mr. McCauley confirmed it was. Mr. LeMay asked if he would be parking vehicles on both sides of the building in the front. Mr. McCauley stated they would not, noting that building was on another lot. Picture #3, at the bottom showed where his vehicles were. The building in the background of that picture was a fence company and had nothing to do with him. Mr. LeMay stated, so, only in the area where the vehicles were now, where that little piece of grass sidewalk was, and Mr. McCauley stated that was correct.

In response to questions from Chairman Witham, Mr. McCauley stated that 15 or 20 cars would fit on the lot if this were approved where right now he could only have 8 or 10 with maybe 3 to 5 behind where they would have no exposure. If this were approved it would essentially give him another lane. He had been in business for two years. Mr. Mulligan asked about the small strip of what looked like grass between the roadway and where it appeared he wanted to park vehicles and whether it would be impacted. Mr. McCauley responded that it was actually a sidewalk painted green and it would not be impacted. He agreed when Mr. Mulligan asked if, should this be approved, he would be parking cars up to that point.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Ms. Chamberlin stated that it appeared from the photograph that the area was still set back from the road but her concern was that, while a few more cars might be fine, 15 or 20 more cars would look cluttered and create a precedent of cars being displayed close to the road, which they didn't want.

Chairman Witham stated that his concern was the spirit and intent of the Ordinance, which was the problem with visibility in backing up cars up onto Lafayette Road. He felt it would be different if the applicant was asking for 28' where he needed 30' but this felt like a lot of relief. The feel of the property also didn't scream that this was a lot with entrance, exit and signage. It felt like cars parked on a paved area with buildings behind. They had picked a very narrow lot to display used cars, which added to the visibility issue, and he wasn't sure that was a reason to agree to move the vehicles closer to the road.

Mr. LeMay stated that, if there were half a dozen vehicles parked behind what appeared to be a large curb or sidewalk that would be less of a problem with distraction and visibility than the vehicles that were all parked across the road behind a fence right up against the road as shown in the aerial photo. He understood there were different requirements for different uses. If they were to consider this, they would have to have some serious restrictions.

Chairman Witham imagined that the spot across the road was grandfathered. The Ordinance had been put into place for a specific reason and to control a specific concern and they just had to weigh if there was a hardship here along with the other criteria.

Mr. Rheume pointed out that, comparing the aerial photo with the sketch provided by the applicant, it appeared that the building in the center of the aerial photo was actually 3611 Lafayette Road and the property they were discussing was up the road a bit and not in the aerial photograph. His second concern was that the special exception for outdoor storage of vehicles implied to him that would be necessary for the use of this property for any purpose. He felt they needed to be careful to consider the way that was written. You would think that, if the business owner had already been granted a license to do this, that exception would already been met somehow and he was a little concerned about the seeming contradiction there.

*Mr. LeMay made a motion to **grant** the request to allow the display of vehicles 5' from the front property line and the special exception point was a good one so he would take the variance first. Mr. Mulligan seconded the motion.*

Mr. LeMay stated that granting the variance would not be contrary to the public interest as there was already a lot of parking along Lafayette Road that distance from the road. With a small number of cars, he didn't see a lot of public interest served by denying this variance in that regard. He couldn't address the spirit of the Ordinance. Substantial justice would be done by allowing a use of the property which didn't seem like an over intensification for a commercial property. He felt that the value of surrounding properties would not be diminished. Regarding literal enforcement of the provisions of the Ordinance resulting in unnecessary hardship, he stated that this was linked to the public interest in terms of being unnecessary. It would be necessary in general to keep all this activity back from the road and there were other properties that were close to the road like this, but most didn't have any parking out front or a setback with signs and so forth. On the other hand, this property was pretty well boxed in from a visibility standpoint by its two abutters so he felt that, perhaps, there was a hardship there.

Addressing the special exception, Mr. LeMay stated that the use was a permitted use. There would be no hazard to the public or adjacent property on account of fire, explosion or release of toxic materials. He would say that would not change. He had addressed the detriment to property values in covering the variance. Regarding any increase in traffic or traffic safety hazard, he felt that the parking would be limited by the sidewalk. They would not be randomly driving off this lot. It would still be in the cut-through areas on either side and there were not that many cars there in terms of a large amount of traffic to begin with. He stated there would be no change in the demand on municipal services or storm water runoff.

Mr. Mulligan stated that he would address the spirit of the Ordinance criteria. This property was in the Gateway Zone and the purpose of that zone was to provide for development and redevelopment of commercial space and he felt this request fell within the scope of that general purpose. As far as the hardship criteria was concerned, there were conditions that distinguished this property from others. This was a narrow lot and the available space was limited by the placement of existing buildings. He pointed that, from the pictures that had been provided, it appeared that various neighboring properties were using the setback from which the applicant was seeking relief, for either parking or other uses such as signage. It certainly seemed like it was consistent with what was in the vicinity and, for that reason, he didn't feel that granting this variance would be contrary to the public interest. He agreed that the special exception criteria were also met.

Chairman Witham stated that he would not be supporting the motion. Part of the criteria for granting a variance was whether it would change the essential character of the neighborhood. He felt this probably wouldn't considering what was across the street and other properties that had been grandfathered. The value of surrounding properties might or might not be diminished. Maybe the fence company would feel some loss of business because now their fencing display would be less visible. However, he didn't feel that the spirit of the Ordinance would be observed. He was not saying this specific owner or car salesman was a problem, but the Ordinance was written to curtail the abuse it gets from car sales operations in this City. He felt the City Council adopted this Ordinance for this specific reason where the City was continually fighting the creep of these car dealerships closer and closer to the property line. It was clear why they would want that for the visibility but with that comes all the banners, balloons, and stickers on the windows 5' from the property line. He didn't feel that was in line with the spirit of the Ordinance and the request did not meet all the five criteria. He added that this was an area the City had tried to get under control because it had been out of control in the past and he felt to go from a 30' setback to a 5' setback was just too much relief.

Mr. Parrott stated that he had two concerns. One not touched on was that this was a State road, which sooner or later would be upgraded and widened, with all that went along with that. If the Board granted these kinds of variances allowing people to be very close to the edge, it would make all that process much more difficult and expensive. With respect to the newly defined Gateway District, he didn't feel that granting this variance would meet the spirit of the Ordinance as defined in the terms of the Gateway. Also, as the Chairman had pointed out, this was a huge variance, going 5' off the property line. He added that when the State had done a major study years ago, they were looking for a 105' setback and this would be contrary to his understanding of what the future Lafayette Road should look like and he couldn't support the motion.

Mr. Rheaume stated that his concern went back again to the special exception. If they denied this motion, his concern was that they would have somehow gone and said that this business person would not have that special exception to allow any outdoor storage of vehicles on the property which apparently he was already doing to support his business. While he concurred with the Chairman’s comments on Item 2, he was concerned that, if they outright denied it, that would be a problem in and of itself.

Chairman Witham stated that where there were situations where there was some question about past precedent or what had gone on before, he tried to encourage the Board that they just needed to deal with what was before them and that was all they were being asked to do and, if there were any fallout, they would have to deal with the Planning Department or he would assume it would have been stated in their report as to possible ramifications. It sounded like they had approvals to do this at some point and he was just coming to them to move it closer to the street.

*The motion to grant the petition failed to pass by a vote of 2-5 with Ms. Chamberlin and Messrs. Moretti, Parrott, Rheaume and Witham voting against the motion.*

(End of Excerpt)

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8) Case # 9-8

Petitioners: David J. & Sandra S. Mikolaities

Property: 165 Richards Avenue

Assessor Plan 129, Lot 40

Zoning District: General Residence A

Description: Construct 2-story rear addition.

Requests: 1. A Variance from Section 10.321 & Section 10.324 to allow a nonconforming building or structure to be added to or enlarged without conforming to all the regulations of the zoning district in which it is located.

2. A dimensional Variance from Section 10.521 to allow a left side yard setback of 2’± where 10’ is the minimum required.

3. A dimensional Variance from Section 10.521 to allow building coverage of 31%± where 25% is the maximum building coverage allowed.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Amy Dutton, project designer hired by the applicants reviewed the proposed 143 s.f. addition at the back of the property. She said the addition would improve the layout of the family room, get extra storage space and fix structural issues.

Ms. Dutton said they would keep the front exactly the way it looked and would do no harm to the public interest, and justice would be served by repairing the tilting staircase to make it safer for the family. She said surrounding property values would not be diminished and the new foundation would correct problems that had developed over the past 100 years. She said the neighbor liked the improvements and had given their blessing. She said locating the addition in another location and trying to meet setbacks would cause a structural hardship considering the rooflines and the family’s needs for interior space.

She said they looked at putting the addition over to the side more, but they couldn't access that space due to a chimney in middle so they wouldn't gain by going that route. She said the applicants respected the Board's decision to deny the request presented on August 21, 2012, but the family of five was trying to stay in their home in Portsmouth.

**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-Chairman Parrott made a motion to **grant** the petition as presented and advertised. Mr. Rheaume seconded. The motion **passed** by a vote of 7-0 for the following reasons:*

- There will be little public interest in an addition of this type located at the rear of the property.
- It will be in the spirit of the Ordinance to allow improvements to the property without adversely affecting neighbors. The extension of the line of the existing structure will not encroach closer to the property line.
- There is no offsetting public interest that would argue against the granting of this request.
- An upgrading of the property will, if anything, increase the value of surrounding properties.
- This is a narrow lot limiting the options for any expansion. The option chosen is the best of a number of alternatives considered.

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9) Case #9-9

Petitioner: Regine Umber  
Property: 211 Park Street  
Assessor Plan 149, Lot 5  
Zoning District: General Residence A

Description: Construction of a 13'± x 22'± garage at the rear of the property.

- Requests: 1. A dimensional Variance from Section 10.521 to allow a left side yard setback of 3'± where 10' is required.  
2. A dimensional Variance from Section 10.521 and Section 10.573.20 to allow a 3'± rear yard setback where 10' is required for an accessory structure.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Regine Umber said a lot had happened since her previous request for variances were denied at the July 24, 2012 meeting. Ms. Umber submitted and read a letter she wrote in response to a letter from her neighbors, the Fabregas that was submitted on August 16, 2012. She said at that time the Fabregas were in agreement and did not attend the July 24 meeting, and then the August 21, 2012 hearing was postponed.

Ms. Umber outlined the history of her 24' x 16' x 16', 380 s.f. garage proposal. Ms. Umber said the basis for her July 24, 2012 denial was due to size and a lack of hardship. Ms. Umber said she received helpful guidance and direction from members of the Planning Department who helped

her address the concerns expressed by the Board of Adjustment with modifications to the size and the location of the garage. Ms. Umber said the modifications were included in her August 21 application. The revised garage plan submitted was a 22' x 15' x 16', 330 s.f. garage, with a 3' setback to the north of the abutting Fabregas' property and a 4' setback to the east of the Cooper's property. Ms. Umber said she couldn't locate the garage elsewhere because of the topography of the driveway and a retaining wall both of which created a hardship.

Ms. Umber said she reviewed the plans with the Fabregas and subsequently lowered the height and added windows to both sides of the garage. A hedge to divide the property had been replaced because the existing hedge had thorns and was not attractive. She said she also agreed to a side door. Ms. Umber said all proposals were on the table at that point in time.

Ms. Umber said as a result of the August 12 meeting, there were two letters to the Board of Adjustment from the Fabregas requesting a smaller 20' x 12' x 14', 240 s.f. garage similar in size to the garage across the street, proposal I of Ex. 1. She said the Fabregas said the neighbors parked their mini van in the referred garage, but in fact, she said this garage was not used for vehicles and was only used for storing garden equipment or toys and the cars were kept on the street or the driveway. She said building a smaller garage would not allow her to store her lawn mower and combustible materials anywhere but in the basement of her home.

Ms. Umber said in a final effort to reach an agreement with her abutters she met with Jack and Abby Cooper of 227 Park Street. Ms. Umber said she and the Coopers signed an agreement on August 17, 2012, which was included in her packet. She said considering the Fabregas' concerns, and with help from the Coopers, she modified her proposal again, reducing the size for a fourth time to a 22' x 13' x 14', 286 s.f. proposal J of Ex 1, with a 3' setback to the rear yard of the Coopers. Ms. Umber said she hoped these changes would satisfy the Fabregas' request regarding width and height.

Ms. Umber also enclosed and read a letter from the Hopkins at 204 Park Street that was submitted for the August meeting because the garage would be in their line of sight. She said it was a modest garage in keeping with the property and neighborhood. Ms. Umber also pointed out that the adjacent neighbor at 212 Park Street built a garage even closer to the lot line than the ordinance allowed, but they did not object and the new structure did not feel like it was encroaching. She said the lot coverage at 212 Park Street was 27.4% and their proposed garage would bring their lot coverage to 27.1%.

Mr. Rheume noted that Ms. Umber mentioned the height as 14' but the plan showed 13'. Ms. Umber said the height would be 13'.

Vice-Chairman Parrott said the only problem was a 3' sideline setback where 10' was required and asked Ms. Umber if she had talked to the contractor about moving the proposed garage two or three feet to the right. Ms. Umber said her property line was only 3' from the driveway and sizing the garage was challenging because of the retaining wall corner and also difficult for snow removal. Vice-Chairman Parrott said he understood she was dealing with a slope and asked if they had considered rotating the garage, 90 degrees so the long dimension would be parallel to the back property line to get the 10' setback. Ms. Umber said the garage would then be higher. Vice-Chairman Parrott then asked if she had considered making some kind of a slope to the garage foundation. Chairman Witham said it was part of their criteria to ask if other options were

considered, but he didn't want the hearing to turn into a design charrette. Vice-Chairman Parrott said he just wanted an answer to his last question and Ms. Umber said she felt she had proposed the best spot.

Ms. Sue Hopkins of 204 Park Street said the street was full of garages and outbuildings within the setbacks as well so she felt the garage met characteristics of the neighborhood and she was in support of the proposal.

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

Ms. Megan Febrega of 201 Park Street asked if the Board had received and read the e-mail she sent the day before. Chairman Witham said they had received the letter.

Ms. Febrega said she learned the day before that a letter they wrote in August would no longer be considered part of the file for the current proposal. She said they were originally told the garage would only be as high as their 13' shed, but they didn't really learn much about the project until after the first denial, and began to have reservations when they were later told it would be 16 feet, as high as their second floor windows. She said she felt there were inaccuracies that needed to be addressed and wanted the Board to know that they did not approve of the garage proposal.

Ms. Febrega said none of the photos shown included their family room and deck. She said the garage would be less than 20' facing the family room addition they built approximately 14 years ago with no windows on the north wall to provide privacy, affecting their light, view and appearance of their house. She said no one wants to look out his or her living room window into a garage. Ms. Febrega said if the hedge that had been there for 50 years were removed, there would be no greenery left and they would only have a view of the garage.

Ms. Febrega said she was also concerned with how drainage would be affected now and that potentially hazardous materials would be stored close to their home. She said most of the garages in the neighborhood were set back and were not adjacent to abutting homes.

Ms. Febrega said they were willing to work with Ms. Umber, and made some concessions too, but they wanted to see clarification on the plans. She said the garage was being built by same contractor that did the garage across the street, but that garage was also designed by licensed architect. Ms. Febrega said she appreciated the revisions, but she was concerned that the project was not being done by someone accustomed to submitting plans though some of the changes were done by the Planning Department. She said because there was still a lack of information about the actual appearance of the garage, they were asking the Board to deny the request.

Mr. Rheume said it sounded as if the Fabregas supported what the petitioner was looking to do in general terms, but asked Ms. Fabrega what changes she was looking for to come to an agreement. Ms. Fabrega said she was concerned with what the garage would look like. She said the numbers weren't nailed down and they didn't want a looming structure over their house. Mr. Rheume said he thought the rough dimensions of the garage were relatively appropriate, but asked if it would sway her feelings if the location of garage was moved a couple of feet one way or another. Ms. Febrega said two or three feet would make a huge difference for them.

Mr. Moretti said she had talked about storage and asked Ms. Fabrega what she had in her shed. Ms. Fabrega said she had a push mower, bicycles, weed killer and lawn fertilizer. She said she hoped there wouldn't be a lot of combustible materials in anyone's home, but she knew Ms. Umber wanted to move her mower and combustible items out of her house and into a garage, but she was reluctant for it to move closer to her home.

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

Ms. Umber said she met with the Fabregas several times and agreed there was quite a bit of confusion and misunderstanding over the difference between ridge height and zoning height. She said she didn't realize she had to hire an architect for a garage, but she made numerous concessions, and agreements. Ms. Umber said she could also move the garage over another foot or two in response to Vice-Chairman Parrott's suggestion, but she didn't see how she could move it back any more than that.

The applicant represented that it was her intent to take the following voluntary actions as a result of her discussions with abutters:

1. Add windows to both sides of the garage to enable light to pass through.
2. Angle any lights toward the applicant's house.
3. Not install motion sensor lights on the garage.
4. Not add dormers or skylights that might increase height.
5. Move the standard access door from the front of the garage to the side.
6. Replace the existing hedge in some fashion.

### **DECISION OF THE BOARD**

*Ms. Chamberlin made a motion to **grant** the petition as presented and advertised with the stipulation that the garage would be shifted 2' further from the left property line for a 5' left side yard setback. Vice-Chairman Parrott seconded.*

Ms. Chamberlin said she couldn't understand how the applicant could turn a car around the wall and slide it into the garage at that angle, but said she would accept it if she could move it 2' without making the driveway unworkable. Ms. Chamberlin noted that the house next door had its own addition and could appreciate the Fabregas not wanting a new structure built nearby, but said she couldn't see preventing Ms. Umber from building an addition as well despite the challenges with the property size and retaining wall.

Vice-Chairman Parrott agreed that the only unusual aspect was that there was some living space in the addition of the adjacent home. He said two feet might not seem like a lot but it was still a concession for the neighbor considering the applicant had the right to a reasonably sized garage, and it was not possible to turn the garage 90 degrees as some properties had because of the sloped back yard.

Mr. Rheume said he thought it was a reasonable use of the property within the neighborhood and he was in support of the motion with the additional stipulation.

Mr. LeMay said there had been requests for similar garages on small lots on Aldrich Street, and after deliberations, the Board concluded that a garage would not justify the encroachment on abutters’ light and air. He said the other garages may have had little setback from property lines, but they were not against abutters’ homes so he did not support the request.

Chairman Witham said they did have some requests from Aldrich Street and some were denied, but he thought at least one of them was granted. He said there was a pattern in this neighborhood of houses and narrow drives with garages to the back, but in this case, the abutter got there first and put on one of the largest additions in the neighborhood leaving little room for space around a garage. Mr. LeMay said they might think less of it if the applicant wanted to put an addition on the back instead a garage up close to the abutter’s living space.

Ms. Chamberlin said she understood there were some miscommunications, but it was a learning process and thanked everyone for trying to work things out.

*The motion passed by a vote of 6-1 with Mr. LeMay voting against the motion. The petition was granted for the following reasons:*

- Granting the variance will not be contrary to the public interest in a neighborhood with garages tucked into many lots.
- The spirit of the Ordinance is to try to maintain the character of the neighborhood and this proposal is consistent with many of the surrounding properties.
- Substantial justice will be done as the applicant had reduced the request several times to make this a more modest request. The only way to make the request more acceptable to the abutter would require the expensive purchase of additional land.
- The value of surrounding properties will not be diminished and the abutting property also had an additional structure up against the property line. The property is limited in its size and, with the existing retaining wall and the slope in the back yard; there are not many choices in placing the garage, which is a reasonable use of the property.

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Mr. Durbin arrived and assumed his seat. Mr. Moretti returned to alternate status.

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10) Case # 9-10

Petitioners: John T. Martin & Margaret Ronchi

Property: 13 Harding Road

Assessor Plan 247 Lot 40

Zoning District: Single Residence B

Description: Replace front steps. Add front raised patio area.

Request: 1. A Variance from Section 10.521 to allow a front yard setback of 8’± where 30’ is the minimum setback required.

**SPEAKING IN FAVOR OF THE PETITION**

Ms. Meg Ronchi-Martin appeared before the Board with a plan to replace their existing entry structure, with rotting stairs that were pulling away from the house, with a safer and improved entry that would be more attractive and inviting. She stated that the flower bed was where the decking would be.

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

With no one rising, the public hearing was closed.

**DECISION OF THE BOARD**

Ms. Chamberlin said the verbal description was modest, and there needed to be clarification on how much of a variance the applicant was actually asking for. Mr. Durbin said there already was an encroachment and essentially, what had been testified was that it wasn't exactly an in-kind replacement, but it was on the same footprint. Mr. LeMay noted that the application listed an 8' setback and the plans showed a 22' existing setback and 15' after the new construction.

Mr. Cracknell said he believed the 22' setback was incorrect. He said applicants typically took the tax map provided by inspection and measure from the edge of the sidewalk or curb without a survey. Mr. Cracknell said the tax map was used for the legal notice, and he often used a GIS system to address discrepancies between a hand drawn plan and the legal notice. He said he believed the plan was for a setback of 8', plus or minus, but using the tax map, he calculated that it was closer to a 15' setback with a 12' x 30' deck and the first three steps at 18" above grade.

Chairman Witham said he thought the patio was 12' x 20' and the deck was just a 5' x 5' landing with some stairs. It looked like the patio was flush with some kind of retaining wall. Mr. Cracknell said the legal ad, in the absence of these drawings, was put together based on the building permit application, which showed the projection coming off the front of the house. He said if, in fact, that patio was below 18", then it would not need to meet the setback.

Chairman Witham requested that the homeowner return to the podium to walk the Board through the plans. Ms. Ronchi said the front deck was going to remain the same, but instead of the stairs going away from the driveway, they were going to go towards the street. She said at that point, the decking was going to be in line with what was already there, but a retaining wall would be put in to make it safer and more accommodating for people. Chairman Witham asked the applicant to confirm that there would be a 5' x 5' wood landing, some steps to a 12' x 20' stone patio and then stairs continuing down toward the street. Ms. Ronchi said that was correct. She said because it was a steep incline up to the house the stairs would be built into the ground so people wouldn't have to use the slippery driveway.

Chairman Witham said because the variance notice said 8'± where 30' was allowed, it could end up being 20' if they took away the patio because it was lower. He said they could still make a motion as presented and advertised if they made a stipulation that the patio could not be higher than 18" above the grade. He said they would only be concerned with the setback for rebuilding a 5' x 5' wood deck landing coming off the house, which was already in place, and taking the steps from the side and pointing them toward the street. Mr. Cracknell clarified for the record that the front yard setback would go to 15' from 8' as long as the patio was below 18".

Ms. Chamberlin asked the applicant if she would agree that the patio would remain below 18" and Ms. Ronchi said that would not be an issue.

*Ms. Chamberlin made a motion to **grant** the petition as presented and advertised with the stipulation that the patio area in front of the stairs would be no higher than 18” above finished grade. Mr. Durbin seconded and the motion was passed by a vote of 7-0.*

The petition was granted for the following reasons:

- The general public will not be negatively affected by a needed repair and rework of the front entry.
- The spirit of the Ordinance will be observed and substantial justice done by allowing improvements to the property while not encroaching on the rights of others.
- This is a modest request that will not diminish the value of surrounding properties.
- The special circumstances of the property are that, while not an in-kind replacement, the same footprint and encroachment will be maintained.

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11) Case # 9-11

Petitioner: Macleod Enterprises Inc.

Property: 1190 Lafayette Road

Assessor Plan 252, Lot 8

Zoning District: Gateway

Description: Renovate existing parking lot. Amend stipulation attached to a previously granted Variance.

- Request:
1. A Variance from Section 10.1112.21 and 10.1112.30 to allow a total of 135 off-street parking spaces to be provided where 143 spaces are required.
  2. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located between a principal building and a street.
  3. Amend the stipulation that a 10’ green buffer be maintained along the sides and rear of the property to allow two areas (172 s.f.± and 178 s.f.±) of impervious surface to be located in the buffer.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Alec McEachern appeared before the Board with Kevin McLeod and John Lorden of MSC Engineering on behalf of applicant. Mr. John Lorden provided an overview of the existing 120 room Comfort Inn hotel with access via two driveways, one from U.S. Route 1 Bypass and another from Peverly Hill Road through the old Yoken’s site. He said there was circulation all around with a generous check-in area in the front and 135 full parking spaces. He said there was no green space and no curbing and they were proposing to improve the area.

Mr. Lorden said they worked in coordination with the development next door, which shared a driveway. He said they would be adding landscaping, lighting, maintain circulation around buildings. He said a Rite Aid and a bank were approved two Planning Board meetings ago. Attorney McEachern reviewed the site construction history and variance requests from 1988 when it was part of a larger parcel containing Yoken’s restaurant. He then reviewed the criteria for granting their request, adding that their primary parking need was at night, and a portion of the parking lot would be used for truck drivers, which utilized the oversize parking spaces without disrupting the normal parking configuration.

Ms. Chamberlin asked if they were adding landscaping and greenery to the parking area and Mr. Lorden pointed out an island planting that they would be discussing with the Planning Board.

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

With no one rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Chairman Witham said he was comfortable with the request because there was an understanding in hotel development and design that they needed less parking because people come in groups and even a full hotel never needed as many parking spaces.

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

Mr. Mulligan said the application for three separate variances having to do with parking was very reasonable and he didn't see any reason not to grant the request.

Vice-Chairman Parrott said the parking setback of 80' from centerline of Lafayette Road was observed and allowed space for greenery. He said the orientation of the building presented a small appearance as viewed from the road and, with the parking aligned on both sides, did not have the appearance of a large mall.

*The motion to grant the petition as presented and advertised was passed by a vote of 7 to 0.*

The petition was granted for the following reasons:

- In an area where many lots have parking between the primary building and the road, this proposal would not change the essential character of the neighborhood.
- This project was the type of development that it is the intent of the Zoning Ordinance to promote in the Gateway zone. The site design works well with the existing structure and the parking relief is between the roadway and an already built structure.
- In the justice test, the loss to the applicant if the petition were denied would not be offset by any balancing gain to the public interest.
- The nature of the surrounding properties was consistent with the proposed development and existing conditions so that their value will not be diminished. The proposed incursions into the 10' buffer, required by a stipulation attached to Variances granted June 30, 1987, would have a minor impact and were necessary to achieve the operational outcome of the parking layout on the property.
- Literal enforcement of the provisions of the Ordinance would result in a hardship due to special conditions, including the placement and orientation of the existing buildings. The purpose of the prohibition against parking between the roadway and the building was to create a streetscape that could not be created in this area so that there was no fair and substantial relationship between the provisions of the Ordinance and their application to the property. Concerning the number of parking spaces, the required number could be achieved, but the proposed number of spaces worked better from an operational

perspective. The slight encroachments into the buffer would have no discernible negative impact.

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12) Case # 9-12

Petitioner: Marie J. Tremblay

Property: 344 Parrott Avenue

Assessor Plan 129, Lot 38

Zoning District: General Residence A

Description: Remove garage. Add 12' x 26' rear addition and 12' x 16' rear deck.

Requests: 1. A Variance from Section 10.321 & Section 10.324 to allow a nonconforming building or structure to be added to or enlarged without conforming to all the regulations of the zoning district in which it is located.

2. A dimensional Variance from Section 10.521 to allow a right side yard setback of 5'± where 10' is the minimum setback required.

3. A dimensional Variance from Section 10.521 to allow a rear yard setback of 2'± where 20' is the minimum setback required.

4. A dimensional Variance from Section 10.521 to allow building coverage of 37%± where 25% is the maximum building coverage allowed.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Harold Holt, the contractor for the project, came before the Board on behalf of the applicant who wanted to build an addition. He said the owner's family wanted her to move her bedroom downstairs to the back of the house similar to the house next door. He said she talked with neighbors to the left and the right and they signed a letter of agreement.

Mr. Mulligan asked what the current percentage of lot coverage was with the existing garage and Mr. Holt said it was approximately 30%. Mr. Mulligan asked if the garage was coming off and Mr. Holt said it was. Mr. LeMay asked if it was a single-family dwelling, and Mr. Holt said it was a two-family dwelling. Mr. Rheume asked if it was a one-story addition and Mr. Holt said it was. Mr. Rheume asked what kinds of rooms were also on the first floor, and Mr. Holt said there was an open concept kitchen and family area where she would be living most of the time.

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

Mr. Rheume said it would be a useful addition to the home and the request seemed reasonable especially considering they were removing the garage structure, which helped with lot coverage.

He said some of the variances were determined by the odd shaped lot configuration and the current setback.

Mr. LeMay agreed it would be an improvement to the property, and said placing the addition to the back would be less encroachment on the neighbors.

Mr. Durbin said he did not support motion as it related to the rear deck proposal. He said most of the discussion focused on the rear addition which he had no problem with, but the rear deck increased lot coverage quite a bit. He said they were getting rid of the garage to replace it with another structure, but there was a lack of conformity and he felt there was no hardship or justification for the rear deck.

Chairman Witham said he had concerns with the deck, but looked at the impact to the surrounding properties and there were no adverse affects to the other odd shaped lots so his concerns were squelched.

*The motion to grant the petition as presented and advertised was passed by a vote of 6-1 with Mr. Durbin voting against the motion.*

The petition was granted for the following reasons:

- Located in the rear of the property and not affecting the overall character of the neighborhood, the proposed structure will not negatively impact the public interest.
- In the spirit of the Ordinance, the existing garage, which was located closer to the property lines, will be removed and there will be no infringement on neighboring properties. While building coverage will be increased, removing a structure will minimize the request.
- Substantial justice will be done by allowing the property owner full use of the property.
- The proposal, supported by abutters, will improve the property by removing a garage in need of repair so that the value of surrounding properties will be increased.
- The unusual lot shape and the placement of existing structures are special conditions creating a hardship in placing a proposed addition.

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13) Case # 9-13

Petitioners: Estate of William Cohen, Barbara Devanna and Robert Cohen,  
Administrators, owners, Jeffrey Collins, applicant

Property: 55 Meredith Way

Assessor Plan 162, Lot 17

Zoning District: General Residence A

Description: Construction of a single family home on a lot with insufficient street frontage and no direct access to a City street.

Requests: 1. A dimensional Variance from Section 10.521 to allow a single-family dwelling on a lot without street frontage, where 100' of continuous street frontage is required.

2. A Variance from Section 10.512 to allow a single-family dwelling on a lot with no direct access to a City street.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Jeff Collins, the applicant, and Barbara Devanna, the owner, came before the Board. Mr. Collins said the lot itself was acceptable as a house lot size, but the original house was almost falling down. He said it would be in the public interest to remove small structures and debris and replace the existing house with a new house. He said justice would be done by granting the variance and there would be a hardship on the owner if the petition were denied because the house was not repairable and could not be occupied. He said a new attractive home would likely enhance values.

Mr. Mulligan asked the applicant to clarify that the existing structure almost sat on lot line, and if they would replace that structure with a new building that was within the setbacks. Mr. Collins said that was correct. Mr. Mulligan asked if they were just asking for a variance from the 100' street frontage requirement because they had no access to and from Meredith Way and they could only get access through Pine Street. Mr. Collins said it had been that way since the house was constructed and the City Attorney was waiting for them to sign a license for access.

Mr. Mulligan asked when the house was constructed and Mr. Collins said it was constructed in the 40's. Mr. Mulligan asked if it was owned by the same family. Ms. Barbara Devanna said she bought the property in 1980 then sold it to her brother in 1983 for \$1. She said they used the same driveway since 1980, crossing over Meredith Way and a little way over the park, but they found out the frontage was on Meredith and that street was never brought down. She said now they were selling it and Mr. Collins wanted to be sure he would be able to use the property.

Vice-Chairman Parrott asked if the existing house was on a foundation and had full utilities. Mr. Collins said it had electric, sewer and water, but no gas. He said he wasn't sure about the foundation. He said the house wasn't safe and he hadn't been inside.

Vice-Chairman Parrott asked if his intention was to add fill to make the foundation or whatever was there safe so it wouldn't sink later. Mr. Collins said he intended to landscape the lot properly. Vice-Chairman Parrott said he was talking about restoring the ground to solid ground, bring it up to grade and not just push wood in and cover with a layer of dirt. Mr. Collins said yes, he would have the debris removed to a landfill.

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

Mr. Glenn Meadows, an abutter from Thornton Street said he was in support of the petition with certain stipulations. He said he would like to have a time period agreed upon between the City and the applicant for the existing structures to be razed and for all items that did not grow to be removed. He said there was an existing septic system on the property and would like to see it removed so there was no ground water contamination. He also recommended that the proposed home be constructed on a permanent foundation in keeping with property values in the area. He said he didn't know what the license from the City attorney was or what the laws regarding driveway access through the park for so many years would be, but he thought they should purchase the property and pay taxes on it. Alternatively, he said the City should create a dry access to Meredith Way with frontage that wouldn't require a variance so the small park could remain for public enjoyment.

Ms. Devanna said she didn't know why Mr. Meadows was concerned with City services on the lot except that he had discussed purchasing the property before and couldn't come to an agreement on the price, however she had been paying City water and sewer on the property for years.

Chairman Witham asked the applicant several questions to avoid excessive stipulations if they were to approve the request as presented and advertised. He asked Mr. Collins if he planned constructing a permanent foundation and Mr. Collins said he would. Chairman Witham asked Mr. Collins if he was planning to use City sewer and water and Mr. Collins said he was. Chairman Witham asked if he planned to remove any septic on the property and Mr. Collins said he was not aware of septic, but said he would remove it if there were.

Chairman Witham said abutters were concerned that the building debris be cleaned up and Mr. Collins said he would do so within the year. Mr. Meadows said he thought a year to raze the current structure was too long for him to support the petition, and he thought it should be done within thirty days. He said there were some safety and health issues attached to this matter, primarily the issue of fire and a serious issue with mold. Chairman Witham said although he understood his concerns, the Board had to stay within their purview and they were dealing with the issue of frontage. Mr. Collins said he understood a 30-day review period after granting, but he said there was nothing he could do within that period because he didn't own the property yet, and they needed a variance first. He said they would be renting a house for a year while they were building the new structure and he hoped the demolition would be done as soon as possible, within two months so construction could be complete in a year.

Ms. Karen Dufour who lived on Meredith Way said she saw this as an opportunity to clean up what had been an eyesore, a health hazard and a bone of contention in the neighborhood for a long time. Ms. Dufour said there had been a driveway through the park for the 20 years since she lived there, and didn't understand why there had to be 100 feet of frontage. Chairman Witham said they didn't want people to subdivide or build in back lots that did not have street access on a public way for emergency vehicles to get through. Ms. Dufour said access from Meredith Way was not possible because the street ended at her property. She said she was surprised it was even called a street. She said years ago the City created the triangle of parkland with just grass, trees and bushes there so there would be no vehicle access on Meredith Way, but they could still come in on Pine Street. She said if anything could be done to improve the lot she would be in support of it and asked if any other variances were needed to complete the goal of building on the lot. Chairman Witham said not as presented.

## **DECISION OF THE BOARD**

*Mr. Mulligan made a motion to **grant** the petition as presented and advertised. Vice-Chairman Parrott seconded with the stipulation that the building permit could not be issued until the issue of access across the City-owned property had been resolved with the City. Mr. Mulligan agreed to the stipulation.*

Vice-Chairman Parrott said he thought the stipulation that an access easement, or license executed by the City attorney was essential because otherwise they would create a land locked lot and structure.

Mr. Mulligan said this was a request for a variance from the requirement that there be 100’ of road frontage for a non-conforming lot and structure that had been on it for at least 60 years and a subdivision approved by the City more than 20 years ago. Mr. Mulligan said granting the variance would result in substantial justice in a residential zone that encouraged single-family dwellings. He said this was a lot that cried out for improvement and redevelopment and that was exactly what the applicant was proposing. He said there was an extremely ramshackle structure on the lot and granting the variance was absolutely justified in terms of increasing surrounding property values. He said it appeared that access from Pine Street would continue, either through a license that the City was going to negotiate with the owner or some other methodology.

*The motion to grant the petition as presented and advertised was passed by a vote of 7 to 0.*

The petition was granted for the following reasons:

- With this proposal, an existing non-conforming structure, outbuildings and debris will be removed. The replacement residence will not change the character of the neighborhood so that granting the variances will not be contrary to the public interest.
- The proposed single/two family home in this residential neighborhood will be in keeping with the intent of the Ordinance and the property will be brought into greater conformance.
- In the substantial justice test, the loss to the applicant if the variances were not granted would not be outweighed by any gain to the public.
- This is a lot which needs the redevelopment and improvement proposed by the applicant. Replacing a ramshackle structure will increase the value of surrounding properties.
- The special conditions of the property creating a hardship are that this is a large landlocked lot on a paper street with access from Pine Street. In accordance with the attached stipulation that access should continue. The purpose of the 100’ frontage requirement is to avoid properties being isolated, which is not the case with this location, close to the center of Portsmouth.

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14) Case # 9-14

Petitioner: MacGregor Investments LLC

Property: 37 Sherburne Avenue

Assessor Plan 113, Lot 17

Zoning District: General Residence A

Description: Construct 10’± x 30’± front addition.

Requests: 1. A dimensional Variance from Section 10.521 to allow a front yard setback of 6’± where 15’ is the minimum setback required.

2. A dimensional Variance from Section 10.521 to allow 29%± building coverage where 25% is the maximum building coverage allowed.

**SPEAKING IN FAVOR OF THE PETITION**

Mr. Brint Shone, owner of the property, said he had revised his lot plan based on Mr. Cracknell’s determination that his measurement was inaccurate. Mr. Shone said he had not had the lot surveyed, and the lot actually started 7’ off the sidewalk, but he was still applying for a front setback variance. Mr. Shone said the house was in its original state and was quite distressed. He

said he intended to completely gut the small, two-bedroom Cape and add a porch that would result in a larger floor plan with three bedrooms and a bath.

Mr. Shone said the porch would match porches on almost every home on the street. He said the 6' encroachment in the front would still be within 18' to the sidewalk. He said the home to the right was 6' to curb so they weren't extending beyond other homes. He said they did consider going off the back side, but they had a sloped yard and they would lose a lot of level area and the porch was an important characteristic of the homes in the neighborhood.

Mr. Shone said if they had a deck out back they could gain more square footage on the ground level, but they really needed more square footage on the second floor. He said there was an existing garage. He said they had to take many trees down and they would do some landscaping. Mr. Shone said they would create a bungalow style house similar to the one across the street so it would not affect the value of surrounding properties. If the house was on a standard lot there would be less lot coverage requirement, but it was half the minimum lot size for that district with a front slope.

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

Mr. Rheume said he had a chance to visit the property. He said at first he was concerned about what seemed like a large addition on one of the smallest home lots in the area. He said the addition would raise the roofline somewhat, but the porch in the front of the house would be a logical use of the property in keeping with neighborhood and would make a good home for a family. He said the net effect of the lot coverage would not be that egregious as it might seem with the illusion of greater frontage because the City sidewalk was set back from the right of way on the street. He said the neighboring property at 47 Sherburne Avenue had a porch that appeared to extend onto City property with a negative setback and another porch on the other side appeared to be close to the property line as well.

Ms. Chamberlin agreed that it was a large addition, but it fit the character of the neighborhood and met the criteria.

*The motion to grant the petition as presented and advertised was passed by a vote of 7-0.*

The petition was granted for the following reasons:

- The proposed addition will not overwhelm the area but will be in keeping with the neighborhood so that the public interest will not be negatively impacted.
- With the sidewalk set back from the right of way, an illusion is created of greater frontage so that this is reasonable request in keeping with the spirit of the Ordinance.

- Substantial justice will be served by allowing the property owner full use of the property in keeping with others in the neighborhood.
  - The value of surrounding properties will not be diminished as the house is in need of repair, which will positively affect values.
  - The special condition of the lot is its small size and the deceptive appearance of the frontage. The proposed is a logical use of the property.
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#### **IV. OTHER BUSINESS**

No other business was presented.

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#### **V. ADJOURNMENT**

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 10:35 p.m.

Respectfully submitted,

Jane K. Kendall  
Acting Secretary