MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m. **November 18, 2014**

MEMBERS PRESENT: Chairman David Witham; Vice-Chairman Arthur Parrott; Derek Durbin; Charles LeMay; Christopher Mulligan; David Rheaume. Alternates: Jeremiah Johnson, Patrick Moretti

MEMBERS EXCUSED: Susan Chamberlin

ALSO PRESENT: Juliet Walker, Planning Department

I. PUBLIC HEARINGS - OLD BUSINESS

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

1) Case # 10-13
Petitioner: John George Pappas Revocable Trust 2004, John G. Pappas, Trustee
Property: Vine Street (Number not yet assigned)
Assessor Plan 233, Lot 107
Zoning District: Single Residence B
Description: Single family home on newly created lot.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. Variances from Section 10.521 to allow a lot area and lot area per dwelling unit of 5,748± s.f. where 15,000 s.f. is required.
2. A Variance from Section 10.521 to allow continuous street frontage of 50'± where 100' is required.
(This petition was postponed from the October 28, 2014 meeting.)

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech on behalf of the owner stated that Mr. George Pappas purchased the home in 1952 and purchased another lot fronting Islington Street six months later. The City then merged the two parcels and it remained merged until Spring 2014, when the lot was unmerged into two lots. Attorney Pelech further explained about the City's subdivision plan and how a block of lots was sold in the 1930s and 1940s and houses built. He showed photos of twelve small houses on small lots and stated that the applicant proposed to do the same thing. He believed that the proposed home met all the Zoning Ordinance requirements with the exception of the lot size,

which had grown to 15,000 square feet and a frontage of 100 feet. Otherwise, the property met the front, rear and side setbacks and height requirements and the home fit well on the lot. The lot was one of the few remaining unbuilt lots in the neighborhood and the owner could not acquire additional frontage or make the lot larger, which created the hardship, so there were special conditions. Attorney Pelech went through the criteria, stating that the project would fit in with the other homes. It would not threaten public health, safety or welfare. They had to balance between the owner's rights to develop the property as allowed by the Ordinance. Substantial justice would be done by granting the variance and balancing the hardship on the family against a perceived injustice to the public. If not granted, the hardship would be severe because the owner could not use the vacant lot. Granting the variance would not be contrary to the spirit of the Ordinance nor the public interest because the intent had always been that the two lots would have homes on them. There were special conditions because the lot was one of the few undeveloped lots in the neighborhood. It would not diminish surrounding property values because it was similar in size and scale and esthetically pleasing.

Mr. Rheaume said Attorney Pelech's write-up had cited dozens of similar lots in the neighborhood with 50' frontage and 100' depth. Mr. Rheaume had counted 6 lots in the original subdivision. Expanding to the entire map, he counted 11 lots of that type and he asked Attorney Pelech to identify the dozens of lots he had cited. Attorney Pelech replied that the lots were all 50' x 100' lots originally, but there had been adjustments over the years and he cited some specific examples which resulted in 60' or 62' lots. He hadn't actually counted the lots but thought there were more than 11. Mr. Rheaume asked Attorney Pelech to elaborate on the photos of the homes in the neighborhood. Attorney Pelech stated that they were all small homes fronting Melbourne and Islington Streets, with the majority of the homes on Melbourne Street. Mr. Rheaume said he toured the neighborhood. Attorney Pelech's examples were all single-story Capes while the building proposed for this lot was a two-story. He wondered why Attorney Pelech felt the proposed home was appropriate for the lot size when all the other homes seemed to be smaller. Attorney Pelech stated that the footprint met the setback requirements and the height requirements for the zone were also met. When he had talked about proportionality he was referring to the footprint not the bulk or height.

Mr. Mulligan asked if there were two driveways accessing the Islington Street property. Attorney Pelech said the driveway from Islington Street to the property went behind the property and the other driveway connected the property to Vine Street. Mr. Mulligan asked if the driveway on Vine Street would be discontinued, and Attorney Pelech said it would.

Mr. Ralph DiBernardo of 1374 Islington Street said he resided in the block that made up 22 of the lots that were part of the subdivision and that the block and lots on Vine Street were begun in the late 1930s. The 22 lots in the block were sizes that were designed to be 50' lots, but some of the homeowners divided the lots to increase them. He thought the property would be consistent with surrounding properties due to the changes in the neighborhood. The house at the corner of Islington and Vine Streets was rebuilt by a buyer to sell as a profit, and he put a second story on it, and he believed those changes were consistent with Zoning and thought the house should be built on the lot.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Mary Beth Savage of 10 Vine Street stated that she was a direct abutter. She felt that the space was too limited and the house would have to go up two stories. The majority of homes in the neighborhood were Capes. She said there were sewer line concerns as well as potential runoff and drainage issues that would affect her backyard. She felt it would be contrary to the public interest visually and spatially, and that it would decrease her property value. Safety was another concern because it would create additional traffic. It would also eliminate a second exit for a house on Vine Street. She thought there were other options for expanding the existing home and also felt that the project was based on monetary reasons.

Mr. Philip Scarponi of 276 Melbourne Street said his lot was the last one on Melbourne Street and felt that the 11,000 square feet asked for was unreasonable because it would sandwich a building on a driveway. It would not be in the best interest of the neighborhood, especially the abutters, and he asked that the request be denied.

Mr. Charles Cormier of 227 Melbourne Street stated that he understood the history of the divided lots but people had to deal with what existed presently. He felt it was out of line with the spirit of the Ordinance because it was almost a third of what was required in square footage and half of the required frontage. He didn't think that even a mobile home would fit on the lot. There would also be a safety issue because the person who bought the house on Islington Street would have to exit that way instead of Vine Street.

Mr. Paul Mannle of 1490 Islington Street stated that he was the direct abutter to both lots and that he had asked George Pappas why the lot was l-shaped. Mr. Pappas told him he wanted the access on Vine Street due to the danger on Islington Street and also wanted to tie into the sewer line that ended on Vine Street. Mr. Mannle stated that the proposed lot was above his lot by 4' to 6', and runoff from construction would end up in his yard. It would be contrary to public interest and the spirit of the Ordinance, and would also make a nonconforming lot more nonconforming. Just because there were other small nonconforming properties in the area didn't make it right. His property would diminish in value and an unsafe ingress/egress to 1470 Islington Street would be created. He felt there was no hardship.

In response to a question from Mr. Rheaume, Mr. Mannle confirmed that his house was not on City water and sewer, adding that no other houses on Islington Street from that point forward were on City water and sewer.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pelech said the applicant was not trying to create another nonconforming lot because the lot already existed. The City involuntarily merged the lots in the 1960s, and now the lots were unmerged, making two separate lots. He believed that it was a substantial building area far exceeding at 66.6% the open space requirements of the Ordinance. The building coverage was 20%, which was required by the Ordinance, so they met the requirements and were simply taking an existing lot and putting a building on it that fit. Attorney Pelech also noted that only three of the 22 lots had 100' of frontage and were the only ones that met minimum lot requirements. He also noted that character-based zoning districts were being created, so the proposal was appropriate and in keeping with the Master Plan.

Mr. Mulligan noted that a few of the abutters were concerned about runoff affecting their properties. Attorney Pelech replied that they could develop a storm water management plan. Mr. Mulligan asked if he would go before the Planning Board as part of the building permit process if the request was granted, and Attorney Pelech stated that he would. Mr. Rheaume noted that the abutters thought there could be a water and sewer connection. Attorney Pelech said there was a sewer line that ran across the lot to the City sewer on Vine Street and that there could be a sewer easement. Mr. Rheaume asked if there were concerns about the home construction and the sewer line, and Attorney Pelech said it would probably be relocated if it was in the footprint of the building.

The owner Mr. John Pappas told the Board that his parents bought the lot while the home was being built at 1474 Islington Street. The back lot stayed at a low level for a year and was then filled. The sewerag ran from the edge of the garage and along the fence to Vine Street. The Vine Street driveway was put in during 1958 because the only way in and out was on Islington Street. He stated that there was no problem exiting the property on Islington Street because visibility was good. Relating to drainage, his house was one of the few on the street with a full basement, so there was no sewerage problem on Islington Street and no drainage problem on the Vine Street lot. He wanted to keep the same footprint as the other homes in the neighborhood and wouldn't want to see a large 2,400 s.f. house built on a double lot.

Mr. Paul Mannle of 1490 Islington Street spoke again and said he had lived at his house for 26 years and could not see cars coming up the street due to the bend in the road. It was difficult to make a turn due to the lack of visibility. The driveway at 1474 Islington Street was blocked by his house and Mr. Pappas's front walk and could potentially be dangerous.

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman Witham stated that the driveway issue on Islington Street should not be pertinent because they were dealing with the lot on Vine Street.

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

Mr. Durbin stated that unique circumstances were created from having a lot that was involuntarily merged, and it was reasonable that the lot would be built on. There was no substantial difference from other lots, other than it was involuntarily merged and was now considered a nonconforming lot. The applicant would address the neighbors' concerns with storm water runoff and surrounding property value diminishment. If someone were to request a stipulation that they have a storm water management plan approved by the Planning Department, he would be fine with it. He was not sure if the other concern of abutters regarding a dangerous situation with cars going in and out of the property and lack of visibility was in the Board's purview, and even if it were, a 100' frontage would not change the situation. The purpose of Zoning was to create sufficient density between lots. Granting the variances would not be contrary to public interest because the variances were consistent with the spirit of the Ordinance and would not change the essential characteristics of the neighborhood. The house would comply with Zoning, so that was not a

relevant concern. It would do substantial justice because the balance would weigh in favor of the applicant's expectations to develop his property.

Mr. Durbin stated that granting the variances would not diminish the surrounding property values, and there could be an increase in values based on the nice-looking home that would be consistent in character with the larger neighborhood. The property had special conditions because the lot was involuntarily merged and the applicant had a reasonable expectation to build on that lot. The 50 feet of frontage was smaller than other properties but consistent with the neighborhood. There was no fair and substantial relationship between the general purposes of the Ordinance and their application to the property as the Ordinance was designed to keep a respectable amount of space between properties. The requirements did not apply so well to this neighborhood because most of the lots had less than the required frontage and were close together, so what was proposed would be consistent with the surrounding neighborhood.

Mr. LeMay stated in regard to the traffic issue that the traffic map showed about 20 driveways fronting Islington Street, including the property with the lot restored, so the notion that the Board was suddenly forcing someone to have another driveway on Islington Street did not hold water. There was substantial weight to the fact that it was an unmerged lot and they were talking about a subdivision here. Rights had been taken away from the owner for a few decades, and to deny someone the ability to develop the property in its now pre-merged condition didn't make sense unless there was a good reason to do so. Unmerging the property wouldn't have much meaning if you were then going to deny its use. The proposal would not change the nature of the neighborhood and justice was served by allowing a reasonable use of the unmerged lots.

Mr. Rheaume asked if the maker and second of the motion would be willing to add the stipulation about the review of the storm water runoff analysis by the Planning Department, and by the Planning Board for the wetlands conditional use permit, as he thought it was important for the neighborhood. Messrs Durbin and LeMay stated they were willing to add the stipulation. Ms. Walker asked if he was wiling to fold it into the conditional use application which would be most appropriate. Mr. Rheaume said he would prefer to give the neighbors an additional opportunity for a public forum to indicate their concerns before another Board with better jurisdiction.

Mr. Rheaume said he would not support the motion because zoning had changed since the lot was created as part of a subdivision in the prior two centuries. The lot did not reflect the neighborhood's characteristics because the neighborhood had grown to be something substantially different from the prior decades. He had driven by the lot and noted that it was a very narrow, tiny lot compared to many of the other lots. A few of the homes were close together, but the added distance developed over time was a defining characteristic of that neighborhood, and he didn't believe that the lot needed to be bigger to reflect the neighborhood. Therefore, the project did not meet the criteria of not being contrary to public interest and did not meet the spirit of the Ordinance. A lot of relief was being asked for. They had a few other examples of unmerged lots that were not asking for 50% relief from the frontage requirement.

Chairman Witham stated that he would support the motion. Such proposals did not usually go over well with neighbors because they lost an empty lot. He agreed that a lot of relief was being asking from Ordinance, which asked for 15,000 s.f. per lot and it was difficult to find a lot that met that requirement so that the zoning did not reflect the neighborhood. Putting a house on the lot

would not change the essential characteristics of the neighborhood, and the lot met all the setback and height requirements.

*The motion **passed** by a vote of 6 to 1, with the stipulation that a storm water mitigation plan would be developed and a request submitted to the Planning Board for approval of a conditional use permit. Mr. Rheaume voting against the motion.*

PUBLIC HEARINGS - NEW BUSINESS

Vice Chair Parrott resumed his seat and Mr. Johnson returned to an alternate seat.

1) Case # 11-1
Petitioners: Lisa L. & Brett Comack
Property: 2 Sylvester Street
Assessor Plan 232, Lot 35
Zoning District: Single Residence B
Description: Subdivide one lot into two.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Proposed Lot One:
   Variances from Section 10.521 to allow the following:
   (a) A lot area and lot area per dwelling unit of 10,183± s.f. where 15,000 s.f. is required;
   (b) A right side yard setback for an existing structure of 2.9'± where 10' is required.
2. Proposed Lot Two:
   Variances from Section 10.521 to allow the following:
   (a) A lot area and lot area per dwelling unit of 5,609± s.f. where 15,000 s.f. is required.
   (b) A lot depth of 79.94'± where 100' is required;
   (c) Continuous street frontage of 70.1'± where 100' is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. Lisa Comack stated that she wanted to subdivide her lot into two lots. The majority of homes on Marjorie Street were nonconforming lots. She believed that granting the variances would not be contrary to the spirit of the Ordinance and not contrary to the public interest because there would be no essential change to the characteristics of the neighborhood. The public health, safety or welfare would not be threatened because several lots were 40' x 40' and her lots were larger. Similar homes also had modest frontage. Substantial justice would be served because it would allow her to have reasonable use of her property. Given that many nearby properties had the same nonconformance, it would not cause hardship to the general public. The values of surrounding homes would not be diminished because they would not be negatively affected. Special conditions of the property prevented proper enjoyment of it, constituting unnecessary hardship. To apply the current Zoning laws would also be an unnecessary hardship. There was no fair and substantial relationship as to the purpose of the Ordinance because there was no other use of the property within the Zone and other properties were also nonconforming.

Mr. Rheaume asked Ms. Comack for additional information on the expected use of the home because he had not seen anything about how the home would look on the new lot as to scale. Ms. Comack said it would be similar to other homes and that she would provide the information proving that the home would comply and fit into the neighborhood.

Mr. Mulligan noted that the property was before them the month before to request unmerging of the lots, and he asked if it was still pending. Ms. Comack replied that the petition had been withdrawn. Mr. Mulligan asked if Ms Comack then had a single lot with 15,792 square feet and the proposal was to divide it into two lots, one with the existing house and one with 5,600 square feet. Ms. Comack stated that was correct. Mr. Mulligan asked how much frontage the second lot had, and Ms. Comack said it was 70 feet. She also noted that the neighbors on Sylvester Street were in favor of the project. Chairman Witham noted that all the lots were 40'x80'.

SPEAKING IN OPPOSITION TO THE PETITION

Mr. Peter Nelson of 610 Middle Road said he was a direct abutter and gave a brief background of the property. He outlined his reasons for believing that the lots were not involuntarily merged creating two nonconforming lots. One was over 67% for lot coverage and the other one 37% over. Mr. Nelson felt that the City should stop granting variances for nonconforming lots. He mentioned other lots with different circumstances, saying that people bought the lot from a developer who sold it as one lot, and the lots should not be subdivided. He felt that the variance would not meet the spirit of the Ordinance because the water and sewer system was overburdened as it was. He also felt that his quality of life would diminish because his view would be a 2-story house.

Mr. Pat Sharkey of One Marjorie Street stated that he lived directly behind the current house at 2 Sylvester Street and that he was opposed for similar reasons. The original 1903 subdivision plan had very tiny lots. His lot was the only one on Marjorie and Sylvester Streets that was a 40'x80' lot when he bought it in 2009, and since then, four additional houses had been built. The current tax map showed footprints of 16 houses. He felt that the spirit of the Ordinance would not be met because variances had been granted before and 20% of additional houses had come into the neighborhood, creating a lot of traffic. He also thought there were drainage issues. He felt that a subdivision would set a negative precedent and asked the Board to consider the neighbors.

Mr. Matt Turner of 3 Marjorie Street said that he agreed with the two previous speakers and felt that the proposal did not meet the neighborhood character. The volume of new homes would diminish other home values, and he was concerned about runoff problems. He thought the request for variances were unreasonable because they were not in the urban part of Portsmouth.

Mr. Peter Nelson spoke again and said he had taken advantage of lower interest rates and refinanced his home twice in six years, making a good financial gain. However, the last time he refinanced was after the other houses went into the area, and his property value decreased. His realtor said the overcrowding of the neighborhood could have been a diminishing value factor.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Comack stated that there were only three homes on Sylvester Street, and the opposed neighbors would not be affected by her building a home on her street.

Mr. Roger Pederson of 777 Middle Road said it was a small lot, so it was hard to imagine how another structure could fit. He felt the project would diminish the area's value and enjoyment of it. He had seen buildings encroaching on each other recently. He also thought it was a safety issue because 613 Middle Street had a driveway going out to Middle Road, so he was concerned about traffic and construction on Sylvester that could cause more congestion. Ms. Comack replied that the construction on the proposed lot to the right of the current home would take place on Sylvester Street and not Middle Street.

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

DECISION OF THE BOARD

Mr. Mulligan stated that he agreed with the applicant that there were a lot of substandard lots, and another one would not alter the essential characteristics of the neighborhood. The bulk of the relief being requested was the lot coverage, and there was a single lot that was in compliance with the lot area requirement. If a variance was granted, two nonconforming lots would be created, and he had a hard time finding the hardship by taking a conforming lot and creating two nonconforming lots. He was not convinced of a hardship and thought the Board would be increasing the nonconformity if the variance was granted.

Chairman Witham stated that he did not see it differently. The lots on Sylvester Street were much larger than the ones on Marjorie Street. The previous application was a lot of record, but the current one was not and they wanted to create two new lots of record. He viewed it much differently than the previous petition. The owner would gain more value by cutting the property up. He imagined that it would set a poor precedent by allowing the subdivisions as opposed to letting someone build on an involuntarily-merged lot.

Mr. LeMay stated that the hardship was a problem for him for that same reason - you can't miss what you never had. As long as the building had been on one lot, the owner enjoyed it and paid taxes. Then they carved off one end to make another property from their investment and denying that did not seem unreasonable to him. There was currently a very reasonable use for the property. It was not as if variances were needed to allow them to expand their house a few feet in a direction and make it more livable. The house was lovely and livable the way it was, so he had a hard time seeing the hardship.

Mr. Rheaume agreed with Mr. LeMay. On the Marjorie Street side, the proposed second smaller lot was not in keeping with how the area actually developed. The original subdivision plan had very small lots but over time that was not how things developed, so he didn't see that creating a new lot was something that should be done. There was a fair amount of room between the two homes on the Sylvester Street but the way the property lines were laid out, the applicant couldn't take full advantage unless they came to some agreement with the neighbor to create a larger lot that might be more consistent with the neighborhood, but he didn't see it at this time.

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

Mr. Mulligan said that in order to deny the variance, the Board had to find one criteria that was not met, and he couldn't get past the unnecessary hardship to the applicant. The lot coverage for the lot area as it existed was just a bit larger than the 15,000 square feet required in the Single Residential B Zone. If the Board granted the variance, it would create two substandard lots and would also create nonconformities in terms of encroachment between the lots because the existing structure would be in the setback. They would be moving from one substantially conforming lot to two nonconforming lots. There were no special conditions of the property that prevented its reasonable use and enjoyment that required the Board to grant that relief. He thought there was a fair and substantial relationship between the purposes of the lot area requirement to avoid overcrowding and substandard lots and their application to the property. Literal enforcement of that requirement did not result in an unnecessary hardship for the applicant. He agreed with the applicant that there were a lot of modest lots in the area and the proposed lot wouldn't alter the essential characteristics of the neighborhood, but he did not think there was any hardship. For those reasons, he thought the application should be denied.

Vice-Chairman Parrott concurred with the previous comments and added that there was much made about the fact that other small subdivided 40' lots in the area went way back in time, and somehow that was presented as an argument in favor of creating another substandard lot. That logic escaped him, because thinking about planning and proper placement of buildings had evolved over the years. In the south end, some buildings touched each other, which was acceptable years before but hadn't been for a long period of time. The argument that it was okay then and must be okay now didn't hold much water with him. He thought the present lot was almost in full conformance, but short on depth. Creating a lot with only 20' of depth for a house that didn't even allow for a deck or back steps did not conform to current acceptable standards. For all those reasons, he supported the motion to deny the petition.

*The motion to deny the petition **was passed** by a unanimous vote of 7 to 0.*

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2) Case # 11-2
Petitioner: Tiffany L. Forrest
Property: 65 Pearson Street
Assessor Plan 232, Lot 99
Zoning District: Single Residence B
Description: Construct a 22' x 27' garage with breezeway connector.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a 3.5'± right side yard setback where 10' is required.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. Tiffany Forrest stated that the intended space was for vehicles, storage and a possible home office. The space would be attached by a 3' x 9'wide breezeway. The existing setbacks were 30' from the front, 30' from rear, and 10' on the sides. She was requesting a 6'5" variance and felt that the garage would not conflict with the purpose of the Ordinance and would

not alter the neighborhood characteristics nor diminish surrounding properties. She added that the abutters were supportive.

Mr. Rheaume requested and received confirmation that an abutter in support lived at 75 Pearson Street. He said that he toured the neighborhood and found that it had a unique charm. He was concerned about the overall size of the garage because most of the other garages were smaller. The most substantial garage was at 45 Pearson Street, but the applicant's proposed garage had additional space above it and was also substantial. He asked Ms. Forrest if she had talked to the neighbors about how it would fit in. Ms. Forrest's response was that the garage would eventually be an extension of her home, which was smaller than the abutting homes.

Vice-Chairman Parrott noted the placement of the proposed garage and stated that Ms. Forrest's lot was 66' wide, yet she wanted to put it on the side. It would be crowded and only 3' would be left. The lot was 170' deep, so he asked why she was not centering the garage out the back of the property. Ms. Forrest replied that she wanted to attach it to her home, and to do so from the rear would be challenging and more costly. Vice-Chairman Parrott asked if an engineer had said that it would be more expensive or that it could not be done. Ms. Forrest said she could not afford to put an addition on the back. Matching the rooflines from the rear would also be challenging.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. Mulligan stated that the request was to add a garage to the existing dwelling. It was a fairly large garage, but the lot was a decent size. The existing dwelling was modest in space, so it was a reasonable attempt to incorporate useful amenities into the property and create useful amenities, and it also increased the living area. The applicant would not get near the lot coverage or open space ceilings that were otherwise applicable. It was plenty of space, but was a challenge to site the improvements without getting into the side setbacks. Overall, the relief being requested was not as significant as it first appeared. All of the criteria were met. Granting the variance would not change the essential characteristics of this modest density residential neighborhood from the modest density residential neighborhood, nor would the public health, safety and welfare be threatened. It would not be contrary to public interest or to the spirit of the Ordinance. If the variance were denied, the loss to the applicant would not be outweighed by a general public benefit, so substantial justice would be done in granting the variances. He was not sure what the benefit would be to maintain the setbacks. It would not diminish surrounding property values. There would be encroachment on the property, but there was a lot of open space, so there wouldn't be two properties on top of one another. Literal enforcement of the Ordinance would result in substantial justice. Promoting sufficient light and air between properties and preventing overcrowding were not factors on the property. There was a lot of open space to the rear and the most affected neighbor also had a significant rear yard, so any additions would follow that path and not detract. There were special conditions to the property. It would not be a fair and

substantial relationship besides the side setbacks. A garage was a reasonable use in a residential zone.

Mr. Rheaume concurred with Mr. Mulligan's comments, adding that the size of the garage bothered him at first, but then he considered its placement. As for hardship, the lot was one of the narrower lots on Pearson Street and was less flexible in garage placement. If the garage were placed in the back yard, it would take away space, make it awkward to get access into the house, and would look strange. The applicant wanted to extend her living space, which he understood because the house was small. As for light and air, the house of the neighbor most affected was situated off to one side, and the neighbor was okay with the loss of light and air. Another factor was that no one showed up to speak against the petition.

Mr. LeMay stated that he would not support it. It was a narrow lot, and there could be other options to develop and use the depth of the lot because it was 175' deep and 66' wide. He was concerned with the sideline and the encroachment on the neighbor with a 2-story addition. It was comparable to the size of the house next door, closing out light and air.

Mr. Durbin stated that he would not support it for the same reasons. It introduced an encroachment where one did not exist.

Chairman Witham stated that whenever he struggled with approving a structure with a setback, he looked at the use of the structure. Garages did not have an adverse impact on abutters, and that particular garage would allow living space above. However, he struggled with the second-floor rear deck because it would only be 3-1/2' from the property line. He suggested a stipulation to remove the second-floor balcony.

Vice-Chairman Parrott stated that he shared Chairman Witham's concern. The garage looked like a small house, and the second-floor deck made it look like more residential space rather than a garage and reminded him of a modern carriage house. He felt strongly that it should not be crowded onto the right side of the lot. He also felt that it could be attached to the rear of the house and perhaps eliminate the connector. A lot of design work could be done to make it more acceptable. The lot was only 66' wide and not typical of the neighborhood. Adjacent lots were 90' and 100' wide. He felt that it was unfortunate that the applicant wanted to place such a large structure in that location when there were other places that would be more successful and leave plenty of yard space, so he could not support the petition.

Mr. Mulligan stated that what was presented was an art studio, and the applicant was not trying to sneak living space into the garage. The Board knew the neighborhood, and if neighbors thought otherwise, the Board would hear from them. The fact that no neighbor was there to oppose the project spoke volumes. The plans were well drawn up, and he was fine with it.

Chairman Witham said he could support the garage but had difficulty with the deck. Ms. Forrest said the deck was just tentative and there would be no privacy issue because the deck itself and the positioning of the garage would sit behind her neighbor's house

*The motion to grant the petition **passed** by a vote of 4-3, with Messrs. Durbin, LeMay and Parrott voting against the motion.*

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3) Case # 11-3

Petitioner: Laurie J. Harrigan Revocable Trust, Laurie J. Harrigan, Trustee
Property: 116 Sherburne Avenue
Assessor Plan 112, Lot 37
Zoning District: General Residence A
Description: Replace a one-story addition and deck with a 2-story 30'± x 30'± rear addition.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow 30.9%± building coverage where 25.4%± exists and 25% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

The owner Ms. Harrigan wanted to construct the addition so that her parents could live with her. It would be a single level living suite, and she would remove the existing addition, including the decks. The new addition would be built on grade and would comply with all required setbacks and would not exceed the height of the existing house and in fact was lower. It would allow a shared entryway and shared kitchen. The overall increase in square footage would be 317 square feet. She believed that the relief was justified because it was a modest increase of just a bit over 5% in lot density. Granting the variance would not be contrary to the public interest, and the spirit of the Ordinance would be observed. The proposed addition would not alter the essential characteristics of the dwelling or the neighborhood and would not cause harm to the general public. The addition would be constructed in the same design as the existing house and would increase her property value and would not affect other properties. The hardship was that the existing lot size was undersized for the zoning district, which restricted her ability to use the property to its fullest extent. It was in a district requiring 7,500 s.f. in lot area, and the existing lot was 5,854 square feet.

Mr. Rheaume asked about the second-floor master bedroom suite. Ms. Harrigan stated that she would demolish the master bathroom and laundry area and convert them into an existing bedroom which would step down and expand out over to the parents' living space. Mr. Rheaume verified that the kitchen would be shared and would be small. The builder Mr. Rick Girardan stated that they would use the existing heating and electrical systems.

Vice-Chairman Parrott asked what the dimensions were for the single story rear addition were. Mr. Girardan said it was 8' x 20' and the width of the house was 22'. Mr. Rheaume said it seemed that 128 Sherburne Street had a substantial addition to the back of their home, and he asked Ms. Harrigan what she was doing that was in keeping with the general characteristics of the neighborhood. Ms. Harrigan said that the addition at 128 Sherburne was a full 3-story addition and past 30 feet. Her addition would look similar with the new entryway off to the left like the neighbor's, but the roof would be much lower than the existing home.

Chairman Witham stated that the Board received a letter from an abutter on Lincoln Avenue who was concerned about the size of the addition. He asked Ms. Harrigan if she had considered a

smaller design. Ms. Harrigan said she was working with her builder and had considered every way possible to do it with enough room for a wheelchair. She went for the smallest footprint that she could. She had spoken to the neighbor in question, who said she was concerned about the blocking of open space. Chairman Witham said he understood but felt that the bedroom was huge and could be smaller. Ms. Harrigan replied that all the lots in her area were long and narrow, and it was difficult not extending past the setbacks. Mr. Girardan said the rear of the house entrance was 6' above grade and they could have a ramp transition from the addition to the rear of the house by making the addition 30' wide. The depth of the bedroom was only 10'x12', with a closet and wheelchair-accessible bathroom.

Mr. Durbin asked if both parents were handicapped. Ms. Harrigan replied that neither parent was handicapped and her father had a walker but might need a wheelchair in the future. Mr. Rheaume asked if the structure on the back was a shed, and Ms. Harrigan said it was. Mr. Rheaume thought they would have extra square footage if it weren't for the shed.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Maxine Feintuch of 180 Lincoln Avenue stated that she sympathized with Ms. Harrigan's need to build a space for her parents, but she also knew that Ms. Harrigan might sell the house eventually and the structure would stay. She felt that the structure was large. The original house was 616 square feet, and the addition was 30'x30'. Many of the homes were on nonconforming lots, and her backyard touched Ms. Harrigan's backyard. Her back lot was Ms. Harrigan's side lot, and their property lines were smaller than the other neighbors. There was open space between the lots, and if an addition was put on, a significant portion of that space would be blocked by a wall of a building. She also felt that it would impact her property value and decrease her privacy. She wanted a compromise and wondered if she should bear the burden.

Ms. Carol Hollis of 557 Union Street stated that zoning existed for a reason and asked the Board why they granted variances when zoning existed and the lot coverage was significant. She felt that zoning should protect property values and the public's health, safety and welfare as well as light and air.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Harrigan noted Ms. Feintuch's concerns and said that she could see in everyone's kitchen as it was, so there wasn't much privacy. Her house had always had an 8' addition, so the amount being constructed was not as great as portrayed. With the addition dropped down, it would provide more privacy. She showed the Board a tax map to illustrate how the addition looked spatially and also showed views from the abutters' properties.

DECISION OF THE BOARD

Mr. Mulligan stated that it was a massive addition, but he was struck by the addition of the home next to it because it looked like a precedent and seemed similar in scale. Chairman Witham agreed that it was a large addition, like a one-bedroom apartment. He was sympathetic to the need for living space for aging parents but thought a one-bedroom apartment was a leap. He felt that Ms. Harrigan could provide a nice living space with a handicapped bathroom and ramp without such a large footprint. He asked if it was appropriate for the lot's backyard to have a one-bedroom

apartment on the ground floor. Mr. Rheaume said he was torn as well because it was large square footage on the ground, but he also felt that the neighbor's addition was more of an imposition than the applicant's request. The applicant was asking for 5% relief on the coverage requirement, which wasn't too excessive. If she got rid of the shed, they would be at 3.7 above the required percentage. The abutting houses were some distance from the proposed addition, and there were carriage houses between other living spaces. The garages abutted against the applicant's property. The Board had seen sizable additions come before them before, and he didn't think it was an enormous amount of relief.

Chairman Witham said that the site plan showed how the addition would creep into the backyard further and would be much wider than the abutter's addition. It looked like a large footprint smack in the middle. He felt that it could be made smaller and still be comfortable. Mr. LeMay agreed, saying it could be divided up adequately if it had started with a smaller area.

*Vice-Chairman Parrott made a motion to **deny** the petition. Mr. LeMay seconded the motion.*

Vice-Chairman Parrott stated that he was concerned with the mass of the addition in that particular setting in respect to the size of the existing house and the size of the lot. When the house was built, there was only 36' from the back of the addition to the rear property line and 11' on each side. The total amount of the addition would more than double the existing house and seemed out of proportion. He had a problem with Criteria 1 and 2, especially the spirit of the Ordinance because the structure was so large with respect to the open space on the lot. It was a good design, but it may be asking too much for the lot. He felt that the structure could be shrunk and still provide a comfortable living space. Relating to the criteria of granting the variance not being contrary to the public interest, the public interest may be represented by the concern of the immediate neighbors. It would not observe the spirit of the Ordinance because the spirit was not to use up so much of the available light and air. It was on a small lot, and you had to work with what you had, especially when neighbors were close by. The substantial justice was a closer call but tipped to the public interest. As far as not diminishing the value of surrounding properties, a case could be made either way, but on balance it would be a negative. It had the appearance of overcrowding by being only 36' to the back property line, so it was close. The property did not have special conditions, so he found it difficult to find a hardship with respect to special conditions. Many properties had similar sized lots. He felt that the structure cried out for a redesign.

Mr. LeMay stated that he had nothing to add.

Mr. Rheaume said he would not support the motion noting that the applicant could make a 30' x 20' addition to their house and be in full compliance with the Zoning Ordinance. The design was driven by the desire to have a large first floor for their parents, which created the hardship.

The motion to deny the petition passed by a vote of 4 to 3, with Messrs. Durbin, Mulligan and Rheaume voting against the motion.

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4) Case # 11-4
Petitioners: Andrew C. McGeorge & Lisa J. Boudrieau
Property: 72 Willard Avenue

Assessor Plan 150, Lot 29
Zoning District: General Residence A
Description: Replace existing roof adding gables and dormers.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow an 8'6" ± left side yard setback and a 6'10" ± right side yard setback where 10' is required for both.

SPEAKING IN FAVOR OF THE PETITION

The owner Mr. Andrew McGeorge stated that he wanted to replace the roof of the house to get more usable space in the attic. They currently had a hip roof with no usable space. He showed photos of what they proposed and said the changes were similar to the neighbor's house. There were front and back dormers on the house for more living space. The variance was to modify a house with existing nonconforming issues and reconfigure the roof within the setbacks. He believed that granting the variance would be in the public interest and in the spirit of the Ordinance because they were building on the footprint and going up vertically a small amount and changing the roofline. They were not changing the neighborhood characteristics because Willard Avenue was an architectural mishmash of styles, and almost all the houses were nonconforming and had setback issues. It would do substantial justice because it would preserve the character of the street. There would be no benefit to the public in denying the variance. No one was there to talk against it. It would not adversely affect property values in the neighborhood because what they were doing was consistent with the neighborhood's characteristics and architecture and should preserve property values. If denied, it would result in hardship because he had a young growing family and needed the additional space.

Mr. Rheaume noted that Mr. McGeorge's house was part of a row of five houses that were identical, and two other houses had gable roofs. He asked Mr. McGeorge if he had more information about the neighborhood development. Mr. McGeorge said the house to the west with the gable roof had the original gable, and their own house had the original hip roof. Their house would be a bit different because it would have the gable plus the dormers, but it would still be consistent with the other houses. Mr. Rheaume asked if his gable was the same height as the neighbor's, and Mr. McGeorge said that it was, adding that he would raise the height of the roof a bit but it wouldn't be perceptible from street level. Mr. Rheaume noted that the unique lot shape drove the request for setback relief.

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

Mr. Rheaume liked the project architecturally and thought it was a logical modification of existing property in light of the adjacent properties. The height was about the same as the neighbor's property and would be in keeping with the characteristics of the neighborhood, so granting the variance would not be contrary to the public interest. The houses were identical and the request was not large. The dormers on the front were modest. What the applicant was asking for was reasonable. The relief asked for was driven by the odd shape of the lot. The orientation of the street was a logical one. He felt that it was a minimal request and would be in keeping with the spirit of the Ordinance. Substantial justice would be done because it was a reasonable expansion of their home. It would increase the value of their home and those around it. The special hardship was lot's odd shape. If it was triangular, the relief would be non-existent, so the general size of the lot was driving the hardship. Its use would not impact neighboring properties.

Mr. Moretti concurred with Mr. Rheaume's comments and had nothing to add.

The motion to grant the petition ***passed*** *by a unanimous vote of 7-0.*

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5) Case # 11-5

Petitioners: Jeffrey Wade and Deborah Walsh
Property: 40 Marjorie Street
Assessor Plan 232, Lot 157
Zoning District: Single Residence B
Description: Construct 12'± x 12'± enclosed deck with attached 8'± x 12'± open deck.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a rear yard setback of 23'± where 30' is required.

SPEAKING IN FAVOR OF THE PETITION

Chairman Witham referred to the Planning Department's report dated March 26, 2013 and noted that the request had been postponed but was granted a few months later.

The owner Mr. Jeffrey Wade told the Board that the existing house was 1700 square feet. He stated the dimensions and said that the stairs went up one end and that the entry was on both sides. The home had recently been built, and the deck was a platform with stairs, so they wanted to add to it. The enclosed area had a roof, and the siding was consistent with the house. He spoke to his neighbors, and the ones at 79 Lois Street were directly impacted but were in favor. He met the setback requirements on the other three sides of the property. He felt that the deck would add value to his property as well as to the neighborhood.

Mr. Mulligan asked if the deck would be elevated. Mr. Wade replied that it would be 6' at its lowest point and 8' at its highest point. Mr. Mulligan asked whether the home on Lois Street was lower or higher, and Mr. Wade said it was lower. Mr. Mulligan asked how far away structure-to-structure the home was from Mr. Wade's house. Mr. Wade said it was about 35' to his property line. Mr. Mulligan noted that it was a concern when the variance was previously granted, and he

asked if there was plenty of open space between the two properties. Mr. Wade said there would be 23' between his property line and the neighbor's line, and 55' between the deck to their house.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Mulligan asked the Board what variances were needed previously. Mr. Rheaume told him it was lot size and coverage. Mr. Mulligan assumed that it was barely within the building envelope. Ms. Walker said they removed the deck. Mr. Mulligan thought the applicant had done a nice job to get the petition approved before, and neighbors were not present to oppose it, so the work that was done must have been satisfactory and mitigated storm water runoff problems with the site, which was important. Ms. Walker stated that the Planning Board stipulated the rain garden and deed restriction, and that the Conservation Commission would look at it closely.

Mr. Rheaume stated that he didn't like the bait and switch tactic, but the structure didn't have a substantial in-ground footprint. The abutters most affected were the people who created the lot and made money selling it. The Board had told the applicant to take the porch off, but now he wanted to put a deck on. He said he was fine with it, however.

Chairman Witham said he had a difficult time with it because it was a lot that the Board created and they followed the building footprint. Mr. LeMay thought the drawing was not scaled properly and that the deck looked like an open porch. He felt that an open porch was not that big of a deal except from an environmental standpoint and that there would be runoff whether porch was there or not. It was more a question of a setback affecting the neighbors. Mr. Mulligan said that the neighbors would be down low. The important criteria was substantial justice, and giving two variances for the same property within a year and a half under those circumstances could be close to unjust due to the condition of the property. Vice-Chairman Parrott agreed and said that it was not the applicant's fault, but 23' of back yard from an enclosed structure was very small and not sufficient for a decent backyard, especially a closed elevated structure that gave a boxed-in feeling. He felt that it was not consistent with the Ordinance's light and air criteria and proper use of property, in addition to the previous history with respect to approving a design. The water capture structure and rain garden were designed on a sizable lot, and the proposed deck would add impervious surfaces, especially the roofed-over section. If approved, the Board might defeat the design of the structure. They had no engineering information to argue that there was plenty of capacity. Mr. Rheaume said that a patio was more impervious than a deck.

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

Mr. Mulligan stated that, to grant a variance, the Board had to meet all five criteria, and some were not met. Substantial justice would not result if the variance was granted. The Board had recently granted a variance to create the lot and build a house, and they had been clear about not permitting encroachments with the deck that was originally presented. Therefore, they should not encourage relief that was not requested earlier. Granting the request would result in injustice because the loss

to the public would be greater than the benefit to the applicant. He also thought that no hardship was demonstrated that required the relief because things other than a covered deck could be installed, like a patio. That would not have the same effect on groundwater, so literal enforcement of the rear setback would not create a hardship on the property. By putting a raised deck on the back of the house, it would look into the backyard of the Lois Street property and have a negative impact.

Vice-Chairman Parrott concurred with Mr. Mulligan's comments.

The motion to deny the petition passed by a vote of 6 to 1 with Mr. Rheaume voting against the motion.

III. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Joann Breault