

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

**February 3, 2015*, Reconvened
From January 21, 2015 and
Rescheduled from January 27, 2015**

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

MEMBERS EXCUSED: Patrick Moretti

ALSO PRESENT: Juliet Walker, Planning Department

V. APPROVAL OF MINUTES

A) December 2, 2014

*Vice-Chair Parrott made a motion to **approve** the December 2, 2014 minutes as presented. Mr. Rheame seconded the motion. The motion **passed** with all in favor, 7-0.*

B) December 16, 2014

*Vice-Chair Parrott made a motion to **approve** the December 16, 2014 minutes with corrections he and Mr. Rheame had requested. Mr. Rheame seconded the motion.*

*The motion **passed** with all in favor, 7-0.*

VI. PUBLIC HEARINGS – OLD BUSINESS (continued from 1-21-15 meeting)

B) Case # 11-7

Petitioner: Merton Alan Investments LLC c/o Joan Ryan & Cassassa

Property: Bartlett Street at Cate Street

Assessor Plan 165, Lot 1

Zoning District: Industrial

Description: Construct 10,000 s.f. ±, three-story office building with associated parking.

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

1. Variances from Section 10.531 to allow the following:
 - a) A front yard setback of 30'± where 70' is required.
 - b) A rear yard setback of 8'± where 15' is required.
2. Variances from Sections 10.5A42 and 10.730 as may be required to implement the site plan provided with this application.
Amendments have been made to this petition which was postponed at the December 2, 2014 meeting.

SPEAKING TO THE PETITION

Attorney Peter Loughlin on behalf of the client and Mr. Patrick Crimmins of Tighe and Bond were present to speak to the application. Attorney Loughlin stated that the Planning Board asked the applicants to make several changes to accommodate the City's plans to reconfigure Cate Street. The applicant was going to wait until the new zoning went into effect, but it was put off. As a result, the applicant was requesting relief from the front and rear setbacks. The side setbacks were presently fine because the Planning Department had said they didn't require relief for parking in the industrial zone. Attorney Loughlin further explained why the reliefs were needed and discussed the lot's history. The lot coverage was less than half of what could be utilized but needed relief due to the narrow shape of the lot. He went through the criteria and stated that all five criteria were met.

Mr. Rheume asked Attorney Loughlin why the applicant was not waiting for the zoning process to be completed. Attorney Loughlin replied that there was a proposal to develop the property 2-3 years before, but the present owners had waited a long time for the zoning to change. The City was confident that their plan fit in with the new zoning, so there was no reason to delay it further. Mr. Rheume noted that Attorney Loughlin was asking for generic relief on two large sections of the Ordinance, not knowing how it would all turn out and thought the applicant was between the old zoning and a future zoning. He commented that it seemed like Attorney Loughlin was asking the Board to write a blank check. Attorney Loughlin said they were asking for relief for a 30' setback from a 70' setback. If the new Ordinance said there had to be an 80' setback, then they would need more relief, but as long as any relief received that night was less than what would be required under the new Ordinance, they would be fine. Everything that could affect it was already filed. Mr. Rheume noted that the lot had an odd configuration along the railroad right-of-way where it jogged in, and the 8' setback from the property line was where it jogged in. He wondered if there were dimensions on how far the jog-in was, relative to the farthest outcropping of the property closest to the railroad. Mr. Rheume asked Mr. Crimmins whether he would still need the relief from the 15' if the building was further back. Mr. Crimmins said they would need a variance for the parking.

Mr. Mulligan asked Attorney Loughlin to clarify whether some portion of the property was scheduled to be transferred to the City. Mr. Crimmins said the area of 7,000 square feet would be given to the City as part of future roadway improvements. The purpose for the widening was that the DPW wanted the applicant to provide a 40-foot width for two turning lanes and two 5' bicycle lanes.

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

The owner of the abutting property at 767 Islington Street stated that he was concerned about the scale of the residential project on that lot size. He asked how many parking spaces would be provided and whether it would be mostly office buildings. Chairman Witham stated that it would be 3-story office buildings and would require 120 parking spaces. Mr. Tio asked about drainage, noting that the location was notorious for flooding. Chairman Witham said it was part of the Planning Board Site Review and would have to meet drainage regulations. Mr. Tio thought a lot of people would cross the railroad tracks to get to the commercial places and said the neighbors had suggested that the developer install a fence to prevent that crossing, which he hoped the Board would consider. He also had a letter from another abutter who had the same concern.

With no else rising to speak, Chairman Witham closed the public hearing.

DECISION OF THE BOARD

Chairman Witham opened up discussion and said he felt that the Planning Department understood that the applicant would be asking for less than what they were asking for presently, so there would be less nonconformity if the zoning did change. It was one of the most restrictive zones in terms of setbacks and coverage, and if it changed, the setbacks would lessen, so they wouldn't need the relief they were seeking at that point. Mr. Rheume was concerned about the blank check nature of what they were saying. Ms. Walker felt the CD4 District was unlikely to move forward but that the Gateway would, and she thought the Board could make stipulations in the approval specific to how the zoning would change. Mr. Rheume said that if there was something that came up that the Board didn't expect, he would like to know. He thought the applicant was on hold until the City Council made their final determination and said he would feel better if the Board knew what they were granting relief for. Mr. LeMay suggested that the Board just deal with the variances that they knew were needed, and if one turned up later, they could come back. Chairman Witham said the Board knew the size and the location of the building, so he didn't feel that they were getting a blank check. Even if CD4 District came into play, he didn't think the applicant had a blank check to change the building. Mr. Rheume mentioned the Design Charette and said he'd prefer to hear what the public thought about it. Chairman Witham thought the Board could grant Setback Variances 1a and 1b. Attorney Loughlin said whatever was shown on the plan was all they were asking for.

Mr. Mulligan noted the comments from the abutters regarding the safety fence and asked Ms. Walker whether the fence would be dealt with at the Site Plan Review. Ms. Walker said that it typically would. Mr. Rheume stated that the petition had to go through Site Plan Review.

*Mr. Mulligan made a motion to **grant** only Variances #1a and #1b as presented and advertised. Mr. Rheume seconded the motion.*

Mr. Mulligan stated that granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because what was proposed was an office building, which would not alter the essential character of the neighborhood because there were office uses within the immediate vicinity. The public health, safety and welfare would not be threatened and would probably be enhanced. Granting the variance would result in substantial justice. The loss to the applicant would be substantial if he was required to meet the setbacks on a challenging lot. Any corresponding gain to the public would be outweighed by the loss to the applicant. Granting the variance would not diminish the values of the surrounding properties. An undeveloped lot was a drain on the neighborhood, and the developments would improve the neighborhood and enhance property values. Literal enforcement of the Ordinance would result in an unnecessary hardship, due to the lot's unusual shape and the fact that it was bounded by two public rights of way and the railroad. Setback relief was likely to be required for almost anything proposed there. He thought the property should be developed and that it fit in well with the neighborhood. The applicant had shown a commendable willingness to work with the Planning Department and the City in getting the project right and had agreed to make adjustments and improve Cate Street. For those reasons, he felt that the variance should be granted.

Mr. Rheume concurred with Mr. Mulligan's points and felt that the strange part of the zoning for the property was the 15' rear setback, which would normally be 50 feet. He wasn't worried about light and air issues because it was a railroad. If the property line continued in a straight line instead of a jog, the 3-story building would still be maintained 15' away from the right-of-way. He felt that it met the spirit of the Ordinance and recommended approval.

Vice-Chair Parrott stated he would support the motion with the understanding that it applied to the December 22, 2014 revised Site Plan, even though the plan was marked preliminary. What they were voting for was exactly what was shown on the plan and not something that might evolve later. It was an unusual situation, in that the whole area was in flux in terms of the zoning.

The motion passed with a vote of 7-0.

VII. PUBLIC HEARINGS – NEW BUSINESS (continued from 1-21-15 meeting)

2) Case # 2-15

Petitioners: Portwalk HI, LLC/Hanover Apartments LLC

Property: 35 Portwalk Place (195 Hanover Street)

Assessor Plan 125, Lot 1

Zoning Districts: CD5, Historic and Downtown Overlay

Description: The provision of parking for a first floor restaurant use.

Requests:

1. An Administrative Appeal of a decision by the Code Official to require parking for a change in use from retail to restaurant.
2. If the Appeal is not granted, the Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 - (a) A Variance from Section 10.1115.21 related to off-street parking

requirements.

SPEAKING TO THE PETITION

Attorney Loughlin representing Portwalk stated that he wrote to the Director of the Planning Department, Mr. Rick Taintor, about the Administrative Appeal, and Mr. Taintor sent a memo to the Board stating that he had a problem with the Appeal but not the variance. Mr. Loughlin asked that the variance be taken up first, and if granted, they would withdraw the Administrative Appeal.

Chairman Witham then read the variance request into the record. Attorney Loughlin said he was also representing the owner of The Green Elephant, and that the reason for the Administrative Appeal was the 2,800 square feet at the corner of Deer Street and Portwalk Place. The hotel opened the previous summer and the Planning Department was anxious to have activity on Maplewood Avenue and Deer Street, but the developers were not convinced that the space would be readily rentable for commercial space. However, the Planning Department was, so a lot of commercial space was placed at that location. There was interest for a restaurant, and a letter was submitted addressing why the restaurant met the amended Ordinance. He discussed the parking situation and said the new Ordinance would be applied to the whole building and not only the parking space. They had asked for an Administrative Appeal, but because Mr. Taintor didn't think the applicant should go that route, they applied for the variance. Attorney Loughlin addressed the section in the Ordinance that stated that there was no requirement for parking and stated that they were asking for relief from a section of the Ordinance that had been eliminated by the City Council. He concluded that the requirement they were seeking relief from was eliminated two years before, and the developer was between the old Ordinance and the new Ordinance, so they were asking for relief from a requirement to have parking for a restaurant. He went through the five criteria and stated that granting the relief would meet all of them.

The general manager of the Green Elephant, Mr. Ben Richards, told the Board that the Portland restaurant was very successful and he was excited to open a branch in Portsmouth. Mr. Rheume asked if the space had more of an identity. Attorney Loughlin replied that it was Unit #35, Portwalk Place. Mr. LeMay asked what the term 'structured parking' meant. Attorney Loughlin said it was not surface parking but was in a structure. Mr. LeMay stated that it was 235 spaces, and they were talking about a variance of 22 spaces between what was required and what existed. He asked if any of the parking was reserved for the restaurant. Attorney Loughlin said that no spaces were set aside for the restaurant, but there was a valet parking agreement

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Mr. LeMay stated that the variance didn't have a lot to do with the restaurant use as the change in use required the same amount of parking, namely zero. They were talking about a change in the parking requirement for the hotel, which was previously 232 parking spaces, and they were going up 45 spaces or so because of the way the parking requirement was calculated in the Zoning Ordinance. He was sympathetic to the argument that the hotel had a vested right for a certain amount of parking spaces. Granting the variance would not be contrary to the spirit of the Ordinance or the public interest because it would not change the nature of the neighborhood, which already had restaurants and retail uses. Substantial justice would be done because the intent was to have more or less the same number of spaces with the zoning change. Granting the variance would not diminish the value of surrounding properties because that whole area was up and coming. As to unnecessary hardship, the special conditions justified it, and it was built in consistence with the zoning requirements at the time, so it would be unreasonable to apply a zoning change strictly to that property.

Mr. Rheume concurred with Mr. LeMay's comments and emphasized that in terms of the spirit of the Ordinance, there was about a 9% change between the old and new Ordinance requirement, and it wasn't fair to ask the developer to rebuild all their parking for that minimal of a change. Regarding the Administrative Appeal, he thought Attorney Loughlin made a good point about how the Zoning Ordinance said that one had to go by the current parking requirements to do the calculation, which flew in the face of the State law about grandfathering. He could see the Planning Department's quandary about having to figure out what the Zoning was at the time and what was grandfathered in. They were following the Ordinance the way it was written.

*The motion **passed** with all in favor, 7-0.*

- 3) Case # 3-15
 - Petitioners: Janet Prince & Peter Bergh
 - Property: 54 Lincoln Avenue
 - Assessor Plan 111, Lot 21
 - Zoning District: General Residence A
 - Description: Construct a 7'± x 14'± rear addition and a 6'± x 8'8"± front addition with stairs. Add dormers and construct a 20'± x 22'± garage.
 - Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. A Variance from Section 10.321 to allow a lawful nonconforming 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 the following:
 - (a) A front yard setback of 12'2" ± where 15' is required.
 - (b) A right side yard setback of 2'10" ± where 10' is required.
 - (c) 26.3% building coverage where 25% is the maximum allowed.

SPEAKING TO THE PETITION

Ms. Retta Fitch of TMS Architects representing the applicant stated that the lot was a substandard one. The lot was 5,692 square feet, smaller than the required 7500 square feet. The lot size was determined prior to the zoning Ordinance, which therefore created a hardship on the property. The existing house and the garage extended within the setbacks. They wanted to replace the garage with a 2-car garage and remove the existing decking and half-bath and replace them with a half-bath, mud room, and a small screened porch. They also wanted to add a front vestibule and two dormers on the roof, which would be within required setbacks. Windows would be replaced with energy-efficient ones, and the siding would be replaced with wood shingles.

Chairman Witham noted that there was a lot going on, but the only part that required a variance was the one-story addition off the rear of the house, the 6' vestibule, the front steps and dormers. He said the dormers looked narrow, and Ms. Fitch stated that they were.

Mr. Rheume noted that there was a letter from the abutters, the Herlihys of 60 Lincoln Avenue, who would be most affected by the project, and he asked if they were in support of the application. Ms. Fitch said they were. Mr. Rheume asked whether the third floor with the two dormers would be an office, and Ms. Fitch said it would. Vice-Chair Parrott asked what the height of the new garage was to the ridge. Ms. Fitch stated that it was no more than 13 feet.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

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

Vice-Chair Parrott stated that it looked like a lot of things happening on a fairly small lot, but the sum total of the change was modest. Granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance because both would be served by the renovation to a house that had needed it for quite a while and would be continued as a residence. Granting the variance would do substantial justice because there was no overriding public interest that would argue against the approval. It would not diminish the values of surrounding properties but could only enhance them. The petition did have special conditions, including a narrow lot below 5700 square feet, with street frontage of only 57' where 100' was required, so he thought the design work was done to the best that it could be on the property. Anything different would be difficult to get within the side setbacks and impossible to achieve what the owners wanted to do. The neighbors were clearly in favor and the petition met all the requirements.

Mr. Mulligan concurred with Vice-Chair Parrott and added that the property abutted a substantial municipal property that would not be subject to development. There was a lot of open space available to the lot, and what was proposed did not overwhelm the open space available to the neighborhood, so he thought that the special conditions cut against the strict literal enforcement as to setbacks.

Mr. Rheume stated that the big selling point to him was the fact that the abutting neighbors, who were probably most affected in terms of light and air and additional views, were in favor. Chairman Witham stated that his initial reaction was that there was a lot going on but then felt that the sections needing relief were modest and minimal.

The motion passed with all in favor, 7-0.

4) Case # 4-15

Petitioners: Peter Cass & Mara Witzling

Property: 33 Hunking Street

Assessor Plan 103, Lot 38

Zoning District: General Residence B

Description: Construct a 6'± x 6'± front deck and 2-story addition.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming 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 an 8'± left side yard setback for an entry deck addition and rear bulkhead where 10' is required.

The architect Ms. Anne Whitney on behalf of the applicant stated that the only area for the variance was the front porch and the bulkhead on the back side. The house had an enclosed front porch which would be removed. She discussed various dimensions and said the existing building was 4'8" from the property line. The bulkhead would be tucked in so it would not be visible from the street. The worst case scenario would be an 8' setback. The other additions and coverage are all within the Ordinance.

Chairman Witham stated that the new front porch was 100 square feet less than the enclosed front porch and that 8 feet of relief would be needed on the new front deck. He asked what the setback was for the front porch that would be removed, and Ms. Whitney said it was 5'8". Mr. Rheume noted that the applicant needed less relief than they previously had in 2013, and he asked if the changes were the result of working with the HDC. Ms. Whitney replied that it had gotten through the BOA and the HDC with the previous owner back in 2008, but that it was now scaled back. Mr. Rheume said that it looked like things were shrunk in from the previous request. He knew the front porch was not an issue in terms of setback, and he asked about the bulkhead, saying the applicant had been given setback relief in 2013 of 6' where 10' was required. Ms. Whitney stated that the permit was never pulled.

**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. Vice-Chair Parrott seconded the motion.*

Mr. Rheume said that it was a minor issue with a bulkhead that was sticking into a setback. The Board previously provided greater relief for a more substantial project than what was currently proposed, and what the applicant was requesting was minimal. Granting the variance would not be contrary to the public interest and would observe the spirit of the Ordinance. The bulkhead at just over 18” was an unsubstantial portion of the house. It would do substantial justice and allow the property to be completed again. The homeowner was asking for something less than what was previously granted and was reducing the scale of it. Granting the variance would not diminish the value of surrounding properties because a bulkhead on private property should not affect anything. As to the hardship test, the bulkhead was in the only location it could go into.

Vice-Chair Parrott concurred with Mr. Rheume and said he had nothing to add.

*The motion **passed** with all in favor, 7-0.*

- 6) Case # 6-15
 - Petitioners: Hayscales Trust, Robert Krieger, Trustee
 - Property: 236 Union Street
 - Assessor Plan 135, Lot 22
 - Zoning District: General Residence C
 - Description: Demolish commercial structure and construct two dwelling units with two driveways and related parking.
 - Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 - 1. Variances from Section 10.521 to allow the following:
 - (a) A lot area per dwelling unit of 2,532± s.f. where 3,500 s.f. is required.
 - (b) A right side yard setback of 1’10” ± where 10’ is required.
 - (c) 40.4%± building coverage where 35% is the maximum allowed.
 - 2. A Variance from Section 10.1114.31 to allow more than one driveway on a lot.

Chairman Witham advised that 708 State Street was next on the Agenda but that the applicant’s representative was running late so that they would hear the petition for property located at 236 Union Street.

The architect Mr. Richard Lo representing the applicant stated that the proposal was to demolish the existing structure and replace it with a residential one. The current building occupied 2/3 of the lot. Replacing the structure would be a great improvement to the property

as well as the neighborhood. The 2-family dwelling would be in conformance with the residential zone, and the essential characteristics of the property would appear as a single-family house. The variance request for a side yard setback was to allow for a garage to be built along the side boundary, and it would sit within the footprint of the existing building. The setback variance was only for an area almost 30' back from the street, and the setback on the other side of the property was 10' for the length of the property. The portion of the building closest to the street complied with all the zoning setbacks. The applicant was requesting below 40% for a waiver for the existing coverage. The 5% comprised the exterior deck, which had to be 18" above the ground for it to be included in the building coverage. It was likely that some of the deck would be closer to the ground, so they were asking for the variance. The variances for the two driveways were a result of the two units, and they wanted to reduce the existing driveway apron that occupied the full width of the property and remove the middle section.

Mr. Rheume thought that the structure was more like an in-law suite and asked whether the front portion of the home would have the second dwelling unit, and Mr. Lo agreed. Mr. Rheume asked if another room facing the street was a bedroom, and Mr. Lo said it would act as a small one-bedroom apartment. Mr. Rheume asked if it was worth it to have two dwelling units for that tiny area and for creating the second driveway. If the kitchen facilities were eliminated, it would remove the need for a second driveway and allow more green space. Mr. Lo said the clients wanted the smaller apartment for their children or as an independent flat. Mr. Rheume asked if there was a separate entrance to it, and Mr. Lo said the street entrance created a vestibule with two entry points, one to the main house and one to the apartment, with a second exterior door near the garage. Mr. Rheume asked whether the roofline for the new structure was driven by solar panels, and Mr. Lo said it was. Chairman Witham noted that the height was measured halfway up the slope and would be 10' below the requirements. Mr. Johnson asked Ms. Walker if the street frontage variance was missing. Ms. Walker said if it was a vacant lot, the street frontage variance would be necessary.

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 stated that he knew the property and thought it was an exciting project and a commendable design. The building coverage was half of what existed, and the 5% could be a deck of 24". The two driveway cuts would reduce the overall driveway cut by 50%, which would be an improvement. It looked like a lot on the surface, but considering what was currently there, he felt that it was a great project that would enhance the neighborhood and be a win-win situation.

Mr. Rheume stated that he liked the project overall but his one sticking point was the second driveway. Most new homes in that neighborhood were single-family ones with single driveways. He felt that the designer was adding the extra driveway for two cars and taking away the homeowner's space, all for a kitchenette in the tiny apartment area of the building,

and it seemed like a lot of relief and inconvenience for a fridge and cooking unit. If they simply made it a separate living area, it would not be considered a dwelling unit.

Mr. Mulligan noted the impacts on the neighboring properties. One of the proposed driveways would abut a brick wall, and there were no windows on the carriage house on that side, so he felt that it was an appropriate place to put a second driveway. The point was made about crowding cars into the other side, but there was a setback there. It was a lot of relief but a huge improvement. Mr. Johnson agreed with Mr. Mulligan and said that they were probably reducing the amount of cars that would currently park on the site. Street parking was at a premium, and adding a residential unit would increase the need for parking, so he didn't have a problem with it.

Vice-Chair Parrott stated that it would be a demolition as if it was a vacant lot, and what was currently there was almost irrelevant. Everyone agreed that the auto shop was inappropriate for the area, and he thought it was asking for a lot of relief. He thought it worked great as a single-family building. It had less square footage than the two previous applications. The requirement for General Residence Area C was for 3500 square feet per unit, the smallest in the City, and the lot was just over 5000 square feet. He had a problem with building it as a duplex and requiring four car spaces. He felt that it was a great opportunity to make it look a lot better with a single-family home in compliance with the Ordinance. He found the arrangement to work it into a duplex peculiar. The side of the garage didn't do much for him. He thought it was a nice lot in a nice area and would work well as a single house, similar to what was up and down the street. Since it would be demolished, it would be a vacant lot and would be built on, and he would want to see a single-family home for the best use of the land.

Chairman Witham passed the gavel to Vice-Chair Parrott and then made a motion.

*Chairman Witham made a motion to **grant** the variance as presented and advertised. Mr. Johnson seconded the motion.*

Chairman Witham stated that granting the variance would not be contrary to the public interest. He felt that the only public interest in question was a duplex on that lot. The lot size per dwelling unit being requested was consistent with what was in the neighborhood. The two properties to the left were a triplex and a duplex and similar in size, so it would not really change the character of the neighborhood. Granting the variance would observe the spirit of the Ordinance because part of the spirit was to bring the properties into greater conformity, and he felt that it did bring the property into greater conformity. It was close to 70% lot coverage with a driveway cut that went the full width of the property, 50' where they proposed 22', so an abutter had a lot to gain over what was currently there. He knew that once it was torn down, they'd be dealing with a vacant lot, but someone could build something else on it. He had seen proposals denied because the property was viewed as a vacant lot, then nothing ever happened. He felt that situation would be more detrimental to the neighborhood than a small duplex. Granting the variance would do substantial justice because it would do greater harm to the applicant than what would be outweighed to the public. No one had spoken against it. It would not diminish the value of surrounding properties and could only enhance them, especially the abutter on the right-hand side whose backyard was a concrete building. The applicant would have more enjoyment of their

property. There were special conditions that distinguished it from other properties. It would be a substantial upgrade for a residential neighborhood to have a residential structure versus a commercial structure. The Board had an opportunity to bring a use that was more conforming, which carried some weight with him in granting two units per lot.

Mr. Johnson concurred with Chairman Witham and added that the use and the esthetic character of the neighborhood would be met.

The motion passed, with Messrs. Durbin, Mulligan, Johnson and Chairman Witham in favor, and Messrs. Rheume, LeMay and Vice-Chair Parrott against (4-3).

- 5) Case # 5-15
 - Petitioners: Thomas J. Schladenhauffen & M. Longi Schladenhauffen
 - Property: 708 State Street
 - Assessor Plan 137, Lot 8
 - Zoning District: General Residence C
 - Description: Construct a 26' x 15.5'± two-story 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 a left side yard setback of 3'± where 10' is required.

Chairman Witham advised that the Board would now hear the 708 State Street petition.

Attorney Bernie Pelech on behalf of the applicant discussed the lot coverage and the open space requirement, which he said would be reduced from 60% to 59%. The garage had a zero setback, and they would not encroach upon the 3' left side setback. The right side setback was compliant. The majority of the changes would be at the rear elevation. He gave a brief history of the area, saying that the buildings were built right to the sideline, and in some cases, both sidelines. He further discussed the lots, structures, and elevations and stated that the west and rear elevations would be most affected by the addition. No part of the addition exceeded the existing roof height. The applicant proposed to maintain the east side and go up another story and to build the rest of the addition where there were currently two decks. The net increase in square footage was about 50 square feet, and the addition would be 3' from the property line. Attorney Pelech went through the five criteria and showed how they were met. He also noted that the neighbors were supportive.

Chairman Witham referred to the diagram of the rear elevation and the gable end above the unshaded area, and he confirmed that half of the gable end was the only part that the variance pertained to and that the other half met the requirement. Attorney Pelech agreed.

**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 variance as presented and advertised. Vice-Chair Parrott seconded the motion.*

Mr. Mulligan stated that the request for relief was relatively modest. It was a vertical expansion of a currently preexisting encroachment into the side yard setback. Granting the variance would not alter the essential character of the neighborhood nor threaten the health, safety and welfare of the public because the neighborhood would still be primarily residential. It would result in substantial justice because there would be no gain to the general public. If denied, the gain would not significantly be outweighed by the loss to the applicant. A modest amount of relief was requested, and the most affected members of the public were already dealing with side yard encroachment that would not get more severe. Granting the variance would not diminish the values of surrounding properties. What was proposed was a tasteful and modest addition, so the values of surrounding properties would be improved. The Board had not heard from any concerns from abutters. Literal enforcement of the Ordinance would create an unnecessary hardship for the applicant because there were special conditions. It was a small house on a small skinny lot with frontage on two public ways, which was unusual, and there were already preexisting encroachments into the side yard setbacks. The encroachment would not be more severe but would be just a vertical extension. The use was a reasonable one, and for all those reasons, he supported it.

Vice-Chair Parrott stated that the additions were appropriate to the house and the lot. The addition was well designed and attractive. He concurred with Mr. Mulligan and had nothing further to add.

*The motion **passed** with all in favor, 7-0.*

VIII. OTHER BUSINESS

There was no other business.

IX. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 9:30 p.m.*

Respectfully submitted,

Joann Breault
Recording Secretary