

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

Remote Meeting via Zoom Conference Call

7:00 P.M.

NOVEMBER 17, 2020

MINUTES

MEMBERS PRESENT: Chairman David Rheame, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS ABSENT: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) Approval of the October 20 and 27, 2020 Meeting Minutes

*It was moved, seconded, and **passed** by unanimous vote (7-0) to **approve** both sets of minutes as presented.*

II. PUBLIC HEARINGS – NEW BUSINESS

Mr. Mulligan recused himself from the following petition, and Alternates Ms. Eldridge and Mr. Hagaman took voting seats.

A) REQUEST TO POSTPONE. Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for Appeal of an Administrative Decision that the following are required: 1) A Variance from Section 10-208 Table 4 - Uses in Business Districts (2009 Ordinance, Section 10.592.20 in current Ordinance) that requires a 200 foot setback from any adjoining Residential or Mixed Residential district for motor vehicle sales. 2) A Variance from Section 10-1201, Off-Street Parking (2009 Ordinance, Section 10.1113.30 in current Ordinance) that requires a 100 foot setback for business parking areas from any adjoining Residential or Mixed Residential district. 3) A Wetland Conditional Use Permit for development within the Inland Wetlands Protection District. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

Chairman Rheame said the applicant needed additional time and had asked to postpone the petition to the December 20, 2020 meeting.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the request to postpone, and Ms. Eldridge seconded.*

Mr. Lee said the Board had always granted a first request to postpone and that he saw no reason not to do so this time. Ms. Eldridge concurred.

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

Mr. Mulligan resumed his voting seat. Chairman Rheume recused himself from the following petition, and Vice-Chair Johnson assumed the seat of Acting Chair. Both Alternates returned to alternate status.

B) Petition of SAI Builders, LLC, Owner, for property located at 27 Elwyn Avenue wherein relief was needed from the Zoning Ordinance to install two AC units which requires the following: 1) A Variance from Section 10.521 to allow a 5.5 foot right side yard where 10 feet is required. Said property is shown on Assessor Map 113 Lot 28-1 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Pat Nysten representing the applicant was present and reviewed the petition. He said the request was to add two AC condensers to the single-family home. He reviewed the reasons why the variance was needed and referred to his previously-submitted criteria.

Mr. Hagaman noted that the applicant was before the Board in 2019 for a request to build on the lot, and he asked why the AC units weren't included at that time. Mr. Nysten said he had thought the units would fit on the sides of the steps leading to the patio. Mr. Hagaman said everything already looked wired for putting the units in the proposed location. Mr. Nysten said the HVAC team had agreed that the proposed location was the most optimal and that the original location by the steps was too visible to the street. Mr. McDonell asked if the applicant had received comments from the southerly neighbors. Mr. Nysten said a neighbor had a noise concern. He noted that the specifications called for 75 decibels (dB) and that other homes in the neighborhood had condensers in close proximity to the lot line. Vice-Chair Johnson said 75 dB was more like the decibels of a washing machine. He said the proposed unit was more of a fully-sized residential condenser than the quieter mini-split systems that were generally used. Mr. Nysten said his contractor recommended it due to the house's size.

Acting-Chair Johnson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Shannon Palace of 35 Elwyn Avenue said she was the southerly neighbor who had emailed the Board earlier. She said she was in favor of the petition but was concerned about the noise because the proposed placement was right under her window on the back side of the house where her son slept. She asked if the condenser could be moved to the middle of the house or if it could be enclosed with fencing to dampen the sound.

SPEAKING AGAINST THE PETITION

No one was present to speak.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Shannon Palace of 35 Elwyn Avenue said if the condenser were moved 14 feet toward the street, it would be in-between another set of windows on that side of the house and farther away from her air-flow window.

No one else was present to speak, and Acting-Chair Johnson closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Eldridge asked if the condenser could be moved. Mr. Nysten said the current location had an area away from the window sill and that Ms. Palace's third floor was far from the ground floor. He didn't know how effective fencing would be because it had to be located 36 inches from the condenser. He said Ms. Palace's house was very close to the lot line and that he felt the proposed location for the condenser was the least obtrusive.

Acting-Chair Johnson said that the Board usually considered window locations of affected properties. He asked if there was flexibility to locate the unit elsewhere. Mr. Nysten said if they moved it to the middle of the house, it would be closer to the neighbor's windows.

Mr. Hagaman said he wasn't inclined to support the petition because he wasn't a big fan of 'build first, ask for forgiveness later'. He said the applicant had received variances the year before and was asking for an additional variance because he miscalculated where the condenser would go. He said the wiring and piping were previously done as well. He said he didn't see the hardship because the applicant created the issue, and that the request also didn't meet the spirit of the ordinance relative to noise and abutting neighbors. He said setbacks were created for a reason and that the two homes so close together with two AC units might create an echo chamber. Mr. Parrott agreed. He said it was new construction and there was full opportunity to anticipate those concerns, but it was dismissed without any real explanation of why the applicant didn't put the units on the back. He said the neighbor's suggestion seemed reasonable and that his only concern with the project was noise because there was nothing to mitigate the sound.

Ms. Eldridge said she didn't agree and thought there was a hardship because there was no room in the backyard to put the unit and it couldn't be put in the front yard. She said the only troublesome window was up on the third floor. Mr. Hagaman said the corner off the rear elevation seemed to be a reasonable place to put it. Acting-Chair Johnson agreed. He said there was the new construction component to the project and that the Board already went through that issue when they dealt with the lot being undersized, but the applicant had still built out the footprint to the side yard setback maximums. He said there were other routes for mechanicals, so he didn't think there was much of a hardship. Relating to substantial justice, he said the most

directly affected neighbor had proposed a revised location that would work better for everyone. He said he wouldn't support the project as presented.

Mr. Lee agreed with Ms. Eldridge. He said every time the distance was doubled away from the sound, it was reduced by 5 dB, so he thought the noise would be decreased considerably. Mr. McDonell said it was frustrating to see a project at 90 percent of the way and then have additional relief requested. He said he would have supported it if it had been requested as a whole package the year before because the only issue at the time was the noise level concern, but the concern was mitigated by the fact that the affected window was on the third floor and that the window faced out the back, so there could be no echo chamber. He said it was reasonable to assume that the neighbor wouldn't be hugely affected by the condenser, but he agreed that better placement of it would be farther up.

DECISION OF THE BOARD

*Mr. Hagaman moved to **deny** the variance request, and Mr. Parrott seconded.*

Mr. Hagaman referenced his previous comments. He said the applicant failed on meeting several criteria. Relating to hardship, he said it was new construction that required variances the first time, so the location of the air conditioners was a failure of design and not the result of an existing property that suddenly had a need for a variance. He said substantial justice would not be done, noting that the neighbor put forth a sound case on reasons why the condenser could have a negative impact on the enjoyment of her property. He said the spirit of the ordinance would not be met because the purpose of the setbacks was to ensure proper light, air, and sound mitigation. He was concerned that a potential echo chamber could have a significant impact on the abutter. He said there were more reasonable locations for the condensers, but the driving force was that the proposed location had already been wired and piped in.

Mr. Parrott concurred. He said it was new construction that started with a blank slate and that the applicant had the opportunity to take into account such problems, with full consideration of the neighbor. He noted that a reasonable compromise was readily available, which was to move the condenser a few feet up the house, but the contractor hadn't offered to do that.

Acting-Chair Johnson said he agreed with Mr. McDonell's point and that he wouldn't have thought twice about approving the variance the first time, but the substantial justice argument would not have been present the first time. He said the negative impact on the abutter from the condenser would have been avoided because the project would have been planned around it, so the substantial justice criteria came up because of the already-constructed factor of the new house. He said the Board evaluated a different property the first time.

*The motion to deny **passed** by a vote of 4-3, with Ms. Eldridge, Mr. McDonell, and Mr. Lee voting in opposition to the motion.*

Note: Acting-Chair Johnson asked that Case D be taken out of order so that he could continue as Acting Chair. It was moved, seconded, and passed to take Case D out of order. However, the

applicant's representative had technical difficulties, so the Board couldn't hear the petition. The applicant for Petition C also had technical difficulties. The Board then voted to take Petition E, 30 Spring Street, out of order and address it.

Alternate Mr. Hagaman took a voting seat for the following petition.

C) Petition of **Bromley Portsmouth, LLC, Owner**, for property located at **1465 Woodbury Avenue** wherein relief was needed from the Zoning Ordinance to construct a standalone automated teller machine (ATM) which requires the following. 1) A Variance from Section 10.1530 to allow an automated teller machine (ATM) as defined in this section to be a principal freestanding structure and not located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building. Said property is shown on Assessor Map 216 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

SPEAKING TO THE PETITION

Michael Pereira was present on behalf of the applicant and reviewed the petition. He said the freestanding ATM enclosure would house the ATM machine and that it had an illuminated canopy. He said the existing precast curb would be replaced with a new curb cut to provide a 22-ft wide continuous drive aisle. He said there would also be a new lawn and additional plantings.

In response to Mr. Hagaman's questions, Mr. Pereira said the bollards would be protection against potential vehicular traffic that could run into the ATM structure itself and that the ATM would be illuminated at night. Mr. Lee asked if the only hardship was the fact that, without the variance, Citizens Bank and the property management company not be able to keep their agreement. Mr. Pereira said it was one of the main hardships. He said there would be no other location within the property, so the contract would be terminated. Mr. Parrott asked if it was in anticipation of further construction of a regular building on the property or nearby, or if it was the total development for Citizen's Bank. Mr. Pereira said it was the total development and was just a walk-up ATM machine.

Chairman Rheume said he wondered if it was really the only location for the ATM because traffic in that location backed up considerably and it was the most trafficked area on the whole site. He asked what drove the idea of putting the ATM on that side instead of on the green strip on the opposite side. Mr. Pereira said it was an agreement between the bank and Bromley properties, and that the easiest route for utilities was the light pole next to Wendy's because if they put the ATM on the green strip, they would have to run power that would cross over Woodbury Avenue. Chairman Rheume said the applicant didn't need a financial institution to have an ATM as an accessory use and that it could be a grocery store and so on. Mr. Pereira said the contract between the bank and the property management company was beyond their discussions and that the bank wanted the freestanding ATM so that they could control it more. Chairman Rheume said the ordinance did not like freestanding ATM machines and that he didn't understand the hardship because a hardship was something about the property that distinguished it from others. He said he was concerned that if the Board approved the

freestanding ATM for the applicant, it could set a precedent. He said there had to be something unique about the property. Mr. Pereira said the property's high visibility and the shopping mall were attractive to the bank and that the stores would benefit from the ATM. He said the location was a barren lawn area, so the footprint wouldn't take up a lot of space.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Lee said he was struggling with the hardship, noting that the applicant's representative was basically saying that Citizens Bank would fire him if the variance wasn't approved. Mr. Parrott agreed and said the hardship had to be inherent in the way the land was developed.

Mr. Mulligan said he didn't think the proposed use was the problem. He understood that a freestanding ATM was not a permitted use, but he thought there were some characteristics of the property that might lend themselves to a freestanding ATM in an appropriate location. He said much of the large amount of parking space wasn't used, and a lot of retail space was getting used less and less. He could see that there might be some benefit to permitting those types of creative use in order to drive a little extra traffic to a retail location that might really need it. He said he could get behind the petition if the location wasn't where it was proposed, which was very visible and would impact traffic on two different corridors. He said he didn't think the applicant made a compelling case for hardship, though. He agreed with Chairman Rheume's concern about the location but knew that the proposal also had to go before the Planning Board and the Technical Advisory Committee. Mr. Hagaman agreed with Mr. Mulligan and Chairman Rheume and said it came down to the location, which was a huge issue. He said two out of three of the entrances had constant backup of cars, and he thought there were more suitable locations for a freestanding ATM. Chairman Rheume said if the Board denied the petition, the applicant could rework it to avoid a Fisher v. Dover scenario.

Mr. Pereira said the agreement was that they could not construct the ATM within the parking lot area. He said the bank understood the traffic concern but felt that it was a freestanding ATM and not a branch bank location. He said the traffic would be the same as at a typical branch location but that transactions were quick at ATM machines.

Vice-Chair Johnson said it wasn't a special exception and that a plaza like that with a bunch of different uses could be a perfect argument for a hardship to have an ATM, but it needed a slam dunk. He said it was the worst location for a freestanding ATM, traffic-wise and safety-wise. Mr. Lee said there was already an agreement in place but that it didn't mean it couldn't be changed for a new location. Chairman Rheume said there were other things to consider per the criteria, and part of the problem was the short transactions at an ATM machine that would cause more traffic and have cars going in all directions.

DECISION OF THE BOARD

*Mr. Lee moved to **deny** the variance for the petition, and Mr. Parrott seconded.*

Mr. Lee said the petition had to pass the five criteria. He said it would be contrary to the public interest because the location was probably the worst one in the 16-acre parcel and had great potential for traffic congestion, and that he couldn't find any hardship at all.

Mr. Parrott concurred and referred to his previous comments.

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

Chairman Rheume and Mr. Mulligan recused themselves from the following petition. Vice-Chair Johnson assumed the seat of Acting Chair and both alternates took voting seats.

D) Petition of **Michael Petrin, Owner**, for property located at **239 Northwest Street** wherein relief was needed from the Zoning Ordinance to demolish a rear addition and construct a new two-story rear addition which requires the following: 1) Variances from Section 10.521 to allow: a) 1.5 foot rear yard where 20 feet is required; b) 48% building coverage where 25% is the maximum allowed; and c) 28% open space where 30% is the minimum required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 122 Lot 3 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant. He said the house had an encroachment into the State's right-of-way and also had a zero front yard setback. He said the hardship was that the home was built in 1830 and taken by the State in 1939, so the structure was nonconforming and there was a hardship inherent in the land. He reviewed the criteria. He said the petition received positive feedback from the Historic District Commission (HDC)

Acting-Chair Johnson asked for a status update on the HDC approval and the shoreland buffer. Attorney Pelech said the HDC put the petition on hold pending the BOA's decision, and he didn't think a Conditional Use Permit (CUP) was necessary because the house's footprint wasn't being increased by more than 25 percent and the addition was no closer to the water than the main structure. Mr. Stith noted that environmental planner Peter Britz was weighing in on the need for a CUP. Acting-Chair Johnson asked if there were exterior and interior renovations, and Attorney Pelech said there would be a full renovation. Mr. Hagaman asked if there were concerns about the safety of the property relative to the Route One Bypass and if the property was in the way of the road building process. Attorney Pelech said the 1939 right-of-way was sufficient and that there didn't seem to be a history of safety issues. He said there was a considerable grade change between the bridge and the rear of the house and about 50 feet of

green space, so he didn't think the State would have gone forward if they thought there were safety issues.

Acting-Chair Johnson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Acting-Chair Johnson closed the public hearing.

DECISION OF THE BOARD

*Mr. Hagaman moved to **grant** the variances for the petition, and Mr. McDonell seconded.*

Mr. Hagaman said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. He said the variance would not violate basic zoning objectives or alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said building a two-story addition was a residential use in a residential area. He said it would be close to the Route One Bypass but there was no record of safety issues, and there was green space between the property and the road itself. He said substantial justice would be done because there would be no gain to the public that would outweigh the loss to the applicant if he couldn't remodel the house. He said much of the property had been taken in the past for the bypass. He said granting the variances would not diminish the value of surrounding properties, noting that no evidence was heard that abutting properties would be impacted. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because much of the property was taken, so it was undersized, and the property line went through part of the garage, so any alteration to the property would require a variance. He saw no fair and substantial relationship between the general public purpose of the ordinance and its specific application to the property. He said it was remodeling and adding an addition to a single-family home, which was a reasonable use.

Mr. McDonell concurred with Mr. Hagaman. He said the taking by the State was a special condition but not the special condition that dictated the relief, and that it was more the fact of what currently existed. He said he could envision a piece of raw land where there was a taking that made a very narrow lot that had a proposed structure that didn't meet the setback requirement. He said that would be a special condition but less of the sort of thing that would be a hardship, whereas the applicant definitely had a hardship.

Acting-Chair Johnson noted that the applicant had owned the property for forty years, and typically the Board saw that type of property bought and a lot of pressure to develop it with multi-family homes. He said it was a great project and that he would support the motion.

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

*It was moved, seconded, and passed unanimously (7-0) to **suspend** the ten o'clock meeting ending rule.*

Mr. Mulligan recused himself from the following petition, and both Alternates took voting seats.

E) Petition of **Jessica Kaiser and John Andrew McMahon, Owners**, for property located at **30 Spring Street** wherein relief was needed from the Zoning Ordinance to construct covered front porch and add dormers to existing dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 28.5% building coverage where 25% is the maximum allowed; b) a 0 foot front yard where 15 feet is required; and c) a 0 foot side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 130 Lot 13 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant and the applicant Ms. Kaiser was also present. Attorney Bosen reviewed the petition and said the need for a home office space was driving the request for variances. He reviewed the criteria and said they would be met.

Chairman Rheume said the staff report indicated that the 28.5% building coverage requested relief should be 29 percent. Attorney Bosen said he would agree to a stipulation for 29 percent. Chairman Rheume said he was concerned about the porch being off to one side and asked whether the side area was really necessary, noting that there was a zero-foot setback. Attorney Bosen said it was to create a better streetscape and to give it more function. He said it would just wrap around a bit to gain a little room. Chairman Rheume said the Board would have to weigh that against the zero-foot setback because the property line was already tight.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

The owner Jessica Kaiser said her young children spent a lot of time outdoors, especially with the pandemic, and that the expanded porch would be great for her to watch them.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else was present to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Vice-Chair Johnson said he was split, noting that the project itself was very modest but that he couldn't get behind the entry addition. He said the Board had a hard time approving a zero-foot lot line, and the pre-made footings for the porch actually crossed the lot line. He said it could be done differently and not have to request as much relief. Mr. McDonnell said he had less of a concern about the side setback. He said the porch was reasonably sized for what the applicant wanted, but he was having trouble seeing a better way to do it because the bay window

prevented the porch from going to the center of the house. He thought the variance request was reasonable, noting that it looked like the lot line was a few feet over and that there was a fence that wasn't right on the lot line. He said it seemed to be less of an issue, especially for construction of something that would be easier to deal with if something down the road prevented reconstruction of it or improvement to it.

Mr. Hagaman asked if the existing porch and steps were all the way to the front lot line. Chairman Rheame said they went slightly beyond the line but there was some City-owned property there, so it felt like it had some distance to the street and that there could be some mitigation. He said he was fine with the front entryway and understood the reasons for the porch but was hesitant to allow the new construction into the zero-foot property line. He said there were other effective ways to do the same thing. He noted that the Board would approve it in perpetuity and that the applicant needed the space for only a few years until her kids got older, after which time the utility of that space would be minimal. He said they were adding a lot of complications for the big picture.

Ms. Eldridge said she agreed with Mr. McDonell that there was still a decent space between the neighbor and the porch and that she couldn't see it impacting the house very much. Mr. Lee said if they added the side porch, it would bring the house more in conformance with other homes in the neighborhood, so he could support it.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the variance for the petition, and Ms. Eldridge seconded.*

After some discussion, it was decided to add a stipulation, and the makers of the motion agreed. Mr. Lee amended his motion as follows:

*Mr. Lee moved to **grant** the variance for the petition, with the following stipulation:*

- That the maximum building coverage be 29 percent instead of 28.5% as advertised.

Ms. Eldridge seconded.

Mr. Lee said that, since COVID, a lot of people wanted either a bigger house for office space or play space for the kids, so the request was reasonable. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance and would not alter the essential characteristics of the neighborhood. He said it would bring the house more in conformance with nearby houses. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public. He said granting the variances would not diminish the values of surrounding properties because it would bring the house more in line with future buyer expectations. He said the hardship would be to deny the homeowner the use of a home office and the space to stay out of the elements while watching over the children.

Ms. Eldridge concurred and had nothing to add.

There were additional comments. Vice-Chair Johnson said he would not support the motion. He said he agreed with many of the comments supporting the motion and all the aesthetic comments of how it fit visually, but what crossed the line for him was the legal ramifications and physical ramifications of the zero lot line. He said someone had fallen off a ladder and gotten hurt doing work on the side of his house, and he thought the Board would facilitate that same sort of setup. He did not think that denying the porch would deny the applicant's enjoyment of the outside. He said the Board was preventing a very specific use in a very specific dimension that could be done in other ways and other places on the site. Mr. Parrott said he had a problem with going over the property line because it would have a negative impact on the adjacent property if a future owner wanted to put a fence up six inches off the property line and the side porch was there. He said he liked the design of the proposed project, but not the idea of forcing people to go on the property line to do maintenance and so on. Mr. Hagaman agreed with Mr. Parrott and Vice-Chair Johnson, noting that he had a lot of concerns about going over and under the property line.

*The motion **failed** by a vote of 4-3, with Vice-Chair Johnson, Mr. Hagaman, Mr. Parrott, and Chairman Rheume voting in opposition.*

Vice-Chair Johnson suggested that the variances be addressed separately and that the dormers go forward but that the porch not be brought up to the property line. The Board discussed stipulating a proposed setback relief of 4'5" for the dormers.

*Vice-Chair Johnson moved to **grant** the variances for the petition as presented, with the following stipulation:*

- *There shall be a right side yard setback of 4'5" for the dormers.*

Mr. Hagaman seconded.

Vice-Chair Johnson referred to his previous comments. He said the reason the zero-foot front yard setback wasn't an issue was mostly because of where the property line fell in relation to the actual public used land on the street, as well as dealing with air and ground vertical rights. He said there were less things and less reasons that a conflict could occur, as opposed to the side zero-foot setback. He said the dormers were reasonable and their locations were more set in stone for functional reasons due to the existing building use as opposed to the front entry. He said the addition of dormers was a tasteful addition to the front entry and would not conflict with the purpose of the ordinance or alter the essential characteristics of the neighborhood, and that it would observe the spirit of the ordinance. He said the rest of the project checked all the boxes. He said it was a modest increase of a single-family home in a neighborhood with plenty of dormers, and it made sense to have the dormers where they were because they needed to function for certain rooms. He said granting the variances would do substantial justice because the homeowner would benefit and the neighbors or public would not be negatively affected. He said the value of surrounding properties would not be diminished because the renovation was modest and the dormer additions were a nice touch. He said literal enforcement of the ordinance would result in an unnecessary hardship if the owner could not do the vertical expansion. He said the property had special conditions, including the siting of the house being extremely far to one side of the property and its skewed angle to the streetfront, as well as the skewed property lines. He

said the proposed use was a reasonable one, with minor changes to a single-family home in a residential neighborhood, and that the petition should be approved.

Mr. Hagaman concurred and had nothing to add.

Chairman Rheume said there was a slight tilt to the property line and was concerned that the applicant could have a hard time extending the front porch out a bit with a 4'5" setback. He thought 4 feet or 4-1/4 feet would be more appropriate and suggested that the motion be amended. Vice-Chair Johnson and Mr. Hagaman agreed.

The **amended** motion was as follows:

*Vice-Chair Johnson moved to **grant** the variances for the petition as presented, with the following stipulation:*

- *There shall be a right side yard setback of 4 feet for the dormers.*

Mr. Hagaman seconded. The motion passed by unanimous vote, 7-0.

Chairman Rheume suggested postponing a few of the more complicated petitions to a future meeting due to the late hour.

*It was moved, seconded, and passed unanimously (7-0) to **postpone** Petitions H and I to the November 24, 2020 meeting.*

(Note: The Board then addressed Petition C).

Alternate Ms. Eldridge took a voting seat for the next petition.

F) Petition of **Thomas Murphy, Owner**, for property located at **95 Dodge Avenue** wherein relief was needed from the Zoning Ordinance to demolish existing home and construct a new home with an attached accessory dwelling unit which requires the following: 1) A Variance from Section 10.1114.30 to allow two driveways where only one per lot is permitted. Said property is shown on Assessor Map 258 Lot 39 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant to review the petition. The applicant Thomas Murphy was also present. Attorney Durbin noted that a second driveway was needed because if the primary driveway were extended and widened, it would reduce much of the yard space. He reviewed the criteria and said they would be met.

Mr. Hagaman asked why the applicant wouldn't just make the additional driveway the only driveway on the property. Attorney Durbin said there was already a driveway to access the front of the existing structure. He said there would be a rebuilt structure almost within that footprint, and that having a second driveway to the rear made more sense logistically and for access.

Chairman Rheume asked who would park where. Attorney Durbin said it hadn't been determined and that there was a mixed access for the ADU. Chairman Rheume asked what drove the need for having a driveway in the front. Attorney Durbin said the driveway was very short and more like a space for two cars to pull up to the front. Mr. Murphy said the original intent was for the back drive to service the ADU, but his parents would be the residents, so the reason for the front driveway was so that they didn't have to climb stairs. In response to further questions from Chairman Rheume, Mr. Murphy said the stairs in front of the ADU would be three feet tall and that the ADU would have a doorway connecting it to the main unit.

Mr. Hagaman asked if it was common for an ADU to get its own dedicated driveway. Attorney Durbin said he hadn't come across a property quite like the applicant's due to the topography and grade change, and he wasn't aware of any other ADUs having their own driveway. Mr. Hagaman asked if the applicant had considered a different design that would omit the garage under the structure and would utilize the existing driveway instead. Mr. Murphy said it wasn't considered because he wanted the ADU to be smaller than the primary structure, so it was ideal to put the garage under the ADU to make it look secondary to the house.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DECISION OF THE BOARD

Chairman Rheume said it was a decent request. He said the grade change was a big driver, and having the continued short parking area in front made sense, especially for someone who had difficulty with stairs

*Mr. Mulligan moved to **grant** the variances for the petition as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan said granting the variances would not be contrary to the public interest or to the spirit of the ordinance and the essential characteristics of the neighborhood would not be altered and would be improved because it was a well-designed project. He said the public's health, safety and welfare would not be threatened. He said there was sufficient reason to separate the parking areas from the ADU and the main unit, and the property had unique characteristics that permitted that without overburdening the land or producing any negative effect on the public. He said granting the variances would do substantial justice because the loss to the applicant if he were denied the variance would not be outweighed by any gain to the public by requiring strict conformance with the driveway requirements. He said granting the variances would not diminish the values of surrounding properties because they wouldn't be affected at all by what was proposed. He said the primary driveway on the front of the home would now be the secondary one and would be a small parking area, with no negative effect. Relating to hardship, he said the property's special conditions were that it was a corner lot and there was a significant grade

change on one side where the new driveway was proposed, which were special conditions that distinguished the property from others, so there was no fair and substantial relationship between the purpose of the driveway requirement to have only one driveway per lot and its application to the property. He said it was beneficial to have the separate units with separate parking that didn't conflict with one another. He said it was a reasonable and permitted use, a residential use in a residential zone, and met all the criteria.

Mr. Parrott concurred and had nothing to add.

Vice-Chair Johnson said the project gave him a different angle due to the ADU involvement, and he thought it was important to review what the intent of an ADU was, which he thought allowed more flexibility when reviewing potential small variance requests when those were part of what the program was.

*The motion **passed** unanimously, 7-0.*

Alternate Mr. Hagaman assumed a voting seat for the following petition.

G) Petition of **Summit 501 Islington, LLC, Owner**, for property located at **501 Islington Street** wherein relief was needed from the Zoning Ordinance for a 900 square foot expansion of an existing medical office in an existing building which requires the following: 1) A Special Exception from Section 10.440 Use #6.20 to allow a medical office where the use is allowed by special exception. Said property is shown on Assessor Map 157 Lot 6 and lies within the Character District 4-L2 (CD4-L2) District.

SPEAKING TO THE PETITION

The owner of the building Todd Baker was present to review the petition. He said the building was a 3-story mixed-use one and that the resident doctor wanted to expand into the adjacent vacant office. He said it would be a very minor change and would take up about three percent of the building. He reviewed the criteria and said they would be met.

The Board had no questions. Chairman Rheaume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. McDonell moved to **grant** the special exception, and Mr. Parrott seconded.*

Mr. McDonell said it was just an expansion of an existing use that was permitted by special exception. He said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic materials. He said there was nothing

to suggest any of that. He said there would be no detriment to property values in the vicinity or change to the essential characteristics of the area on account of the possible changes. He said he had not heard anything and it was just an expansion of an existing use, so he could not imagine those occurrences happening. He said granting the special exception would not create a traffic safety hazard or a substantial increase in traffic in the vicinity. He said the 900 s.f. increase in use would be a counterpart to a 900 s.f. decrease in use in the building from some other use, so he didn't see any traffic hazards or increase in the level of traffic. He said granting the special exception would pose no excessive demand on municipal services including water, sewer, waste disposal, police and fire protection, or schools. He said he had not heard anything to that effect. He said it would pose no significant increase of stormwater runoff onto adjacent properties or streets. For all those reasons, he said the Board should approve the petition.

Mr. Parrott concurred and had nothing to add.

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

H) Petition of **Gregory & Amanda Morneault, Owners**, for property located at **137 Northwest Street** wherein relief is needed from the Zoning Ordinance to subdivide one lot into two lots and construct a new two family dwelling which requires the following: 1) Variances from Section 10.521 to allow: a) a lot depth of 44.7 feet for Lot 1 and 23.4 feet for Lot 2 where 70 feet is required for each; b) a lot area per dwelling unit of 5,317 square feet for proposed Lot 2 where 7,500 square feet per dwelling is required; c) a 2.5 foot front yard for proposed Lot 2 where 15 feet is required; and d) a 4 foot rear yard for proposed Lot 2 where 20 feet is required. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District.

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously (7-0) to **postpone** the petition to the November 24, 2020 meeting.*

I) Petition of **111 Maplewood Avenue, LLC, Owner**, for property located at **145 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance for signage for new building which requires the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street. 3) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously (7-0) to **postpone** the petition to the November 24, 2020 meeting.*

III. OTHER BUSINESS

There was no other business.

IV. ADJOURNMENT

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary