

**BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
Remote Meeting Via Zoom Conference Call**

7:00 P.M.

JANUARY 19, 2021

MINUTES

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

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheame welcomed the new alternate member David MacDonald.

I. APPROVAL OF MINUTES

A) Approval of the minutes of the meeting of December 15, 2020.

*Mr. Hagaman moved to **approve** the minutes as amended by Mr. McDonell, and Mr. Parrott seconded. The motion **passed** by unanimous vote, 7-0.*

Chairman Rheame stated that there was a request to postpone New Business, Item E, 36 Artwill Avenue. He asked for a motion to take it out of order.

*It was moved, seconded, and **passed** by unanimous vote, 7-0, to take the item out of order. (See Page 12).*

Chairman Rheame stated that both alternates would be voting members for every petition and that the new alternate Mr. MacDonald would vote as needed for recusals.

II. OLD BUSINESS

A) Extension Request. The request of **Stephen Bucklin, Owner**, for property located at **322 Islington Street** for an extension of the approval issued on February 26, 2019 to move an existing carriage house to a new foundation and add a one-story connector to the existing house wherein the following variances are required: a) from Section 10.5A41.10A to allow a 1 foot rear yard where five feet is required, b) from Section 10.5A41.10A to allow a two foot left side yard where five feet is the minimum required; and c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without

conforming to the requirements of the ordinance. Said property is shown on Assessor Map 145, Lot 3 and lies within the Character District 4-L2 (CD4-L2) District.

Chairman Rheume said the applicant was granted variances to conduct the project but had not yet met all the requirements, including submitting engineering details associated with drainage and also due to the impacts of the pandemic, so he was requesting a one-year extension.

DECISION OF THE BOARD

*Mr. Hagaman moved to **grant** the request for extension, and Ms. Eldridge seconded.*

Mr. Hagaman said the request was a permissible one and the delays caused by COVID were understandable, so the extension should be granted. Ms. Eldridge concurred.

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

Mr. Mulligan recused himself from the following petition. Mr. MacDonald took a voting seat.

B) Rehearing Request. The request of **Jessica Kaiser and John Andrew McMahon, Owners**, for property located at **30 Spring Street** for a rehearing of the Board's November 17, 2020 decision.

Chairman Rheume read the previous variances granted and said the applicant wanted a rehearing on the side yard variance for the front porch. He asked if there was any error made by the Board or significant information that was unavailable at the time that justified a rehearing.

Mr. Hagaman said he would not support granting a rehearing because he saw no new facts or facts that the Board had not originally properly considered that would warrant a rehearing. He said the applicant pointed out that the remodeling of a neighbor's property in 2008 caused a shadow to be cast on the applicant's backyard, but he said it wasn't discussed at the previous hearing and wouldn't have been a factor anyway. He said he also disagreed with the applicant's argument that the porch extending to the property line was the equivalent of maintaining the bushes that were already there because he thought a permanent structure differed greatly from greenery that could be removed if there was a dispute with the property line in the future.

Mr. MacDonald said he thought the site was very congested and it appeared that the building was already undergoing work. He said he could understand the owner's view that their property had been affected by the adjacent one that was built out, but he didn't think the applicant's request for a variance was justified by that. He said he didn't know the status of a permit for the work being done but didn't think the request met a standard of worthiness for extension or rehearing. Mr. Stith pointed out that the work on the dormers had begun without a permit and the building inspector had issued a case-and-desist order, so the contractor then split the permit so that the portions approved by the Board could move forward with a building permit.

Chairman Rheume said he believed the applicant got a fair hearing from the Board. He said there was a lot of discussion, and the applicant's representative had even noted that the Board

had concerns about a zero-foot property line. He said the Board did allow a zero-foot property line in the front of the property, which made sense due to the way the property line was located relative to the street and the sense of open space, but the Board had concerns about building right up to the neighboring property line due to potential future issues. He said the applicant stated that the backyard wasn't as usable as it once was, a fact that Chairman Rheume said didn't change the Board's determination on the merits of what was requested for the front yard and the immediate adjacent side yard. He said there were other alternatives that the applicant could pursue. He said the Board's consideration had been fair and that the new information provided by the applicant didn't change that.

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

Mr. Hagaman said he concurred with Chairman Rheume. He said there was a lot of previous deliberation and fair consideration of the application and that he did not believe that any error was made that would justify a rehearing, or that the arguments highlighted by the applicant were persuasive in overturning the Board's earlier decisions. He said there was a difference between a zero-foot setback and a front yard that still had a lot of grass and was a good distance from the pavement versus a neighboring property. He referred to his earlier comments and said the request should be denied. Mr. Parrott concurred. He said the hearing was thorough and fair and that the Board had been consistent about the fact that property lines should be respected. He said that forcing someone to step onto an adjacent property to build or do maintenance was bad policy.

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

Mr. Mulligan recused himself from the following petition. Mr. MacDonald took a voting seat.

C) Rehearing Request. The request of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for a rehearing of the Board's December 15, 2020 decision.

Chairman Rheume said the Board previously denied the appeal of administrative decision for two variances and that a wetlands Conditional Use Permit (CUP) would be required, so the applicant requested a rehearing.

Mr. MacDonald said one of the requirements was based on the proximity of the parking spaces for either storing or parking vehicles and that the applicant was told that it was too close to a residential unit. Mr. MacDonald noted that the Dodge dealership across the street was much closer to the residential buildings, and he wondered if that constituted a precedent indicating that it wasn't a problem. Chairman Rheume said the Dodge dealership wasn't asking to expand its operation like the applicant was, and that there was also litigation associated with which zoning ordinance would be applicable to the property. He said the Board was asked to determine whether the applicant's request required variances or not, as determined by the Planning Director, and that the Board upheld what the Planning Department thought was necessary. Mr. Hagaman said the applicant relitigated the issue of which ordinance applied and thought that the Board covered that during their previous discussion and that he didn't find it persuasive

enough to warrant a rehearing. Relating to the applicant's argument pertaining to the consent decree and whether a CUP was required, he said the precedence cited in that argument was out of State jurisdiction and didn't find them persuasive, Vice-Chair McDonell said the applicant argued that the Board was improperly focused on the handicap space shown on the plan. He said he didn't agree because it was just an illustration that the proposal within that buffer wasn't for display or sale, so it was reasonable for the Board to conclude the same thing the Planning Department did. As to what the handicap space would be used for, Vice-Chair McDonnell said the Board hadn't heard it before and that he didn't buy it now. He said none of the other points the applicant made changed his view that the Board gave the application a full hearing.

Mr. Parrott said the meeting minutes reflected how thorough and exhaustive the discussion was that led to the conclusion that the Board made and that there was no aspect left untouched in that extensive discussion. He noted how many reiterations there had been, so for the applicant to imply that the City was doing underhanded business in changing ordinances was ludicrous. He said the City followed the law in respect to rules and posting. He said the applicant's statement that the City didn't make any copies or that the copies weren't available was nonsense and beyond common sense, yet it was put forward as a legal argument. He said the City was scrupulous in following all rules, regulations, ordinances, and laws that pertained to that property, and that the applicant had not presented anything new that the Board hadn't heard before. He said he could not support a rehearing.

Mr. Hagaman said he researched New Hampshire law regarding the argument that a city's acquisition of a nearby property automatically rezoned it and found that it only mattered on properties that were under some kind of government use. He said the Board would be wading in uncharted waters to have that kind of discussion and that the applicant had not even made an argument pertinent to it or cite any cases. He said the applicant's putting forth that statement should not require a rehearing or re-litigation of that issue. Chairman Rheaume agreed. He said the Board had an extensive discussion, with lots of questions and discussion heard from the City, and didn't think the applicant was shorted of any of the Board's attention or due diligence. He said the issue was whether or not the Planning Director reasonably reviewed the information that was available and decided what the appropriate actions were, and that the Board was convinced that was the case. He said the issue of whether the parking in the buffer was used for display of cars or for customer parking was perhaps an important distinction for the ordinance, but the plans provided by the applicant and the applicant's agreement that those plans put in front of the Board by the City Attorney represented the plan that they submitted to the Planning Department was not clear. He said it was reasonable for the Planning Director to say that, based on the information in front of her, the conclusion that she drew was the correct one. He said it was possible that the applicant could get around some of the requests for variances with some changes, but the CUP ran into more concerns. He concluded that the arguments the applicant brought forward were carefully reviewed by the Board and that the Planning Director was not in error. He said the request was invalid and that no rehearing should be granted.

DECISION OF THE BOARD

*Mr. Parrot moved to **deny** the request for rehearing, and Ms. Eldridge seconded.*

Mr. Parrott referred to the Board's previous discussion, noting that the Board members were united in their decision that there was no error or any pertinent new information presented by the applicant for a rehearing. He said the record spoke for itself and that the Board should deny the rehearing. Ms. Eldridge concurred and had nothing to add.

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

Chairman Rheame recused himself from the following petition and Vice-Chair McDonell was Acting Chair. Mr. Mulligan resumed his voting seat and Mr. MacDonald retained a voting seat.

D) Rehearing Request. The request of **Gregory & Amanda Morneault, Owners**, for property located at **137 Northwest Street** for a rehearing of the Board's November 24, 2020 decision.

Acting-Chair McDonell said the Board denied variances to subdivide a lot and to construct a two-family dwelling, and he read the variances.

Mr. Parrott said that one of the arguments made was that the proposed duplex being across the street from a house on Mill Pond would diminish the value of that property. He said a prominent feature of that house was that it was waterfront property and wouldn't change if the new duplex was built, so he thought that might be a relevant concern of the Board. He said if someone wanted to place a duplex up against a berm that led to the highway, there was no adverse risk to a neighbor because there was no neighbor. He said the owner should be able to invest in such an odd place unless it harmed anyone else. He concluded that it would not harm other people or endanger anyone because it would be located at a dead end and not a busy street. He said he would support granting a rehearing. Mr. Hagan said he understood Mr. Parrott's viewpoint but that the application only had to fail one criterion for a variance to be denied, and his concern was the lot-area-per-dwelling unit including the City's turnaround on that part of the property. He said was also concerned about safety, seeing how small the yard was and how close the house would be to the turnaround where City equipment would be. He said the bigger issues were related to the property itself and what was proposed there. He said a duplex wasn't an unreasonable use in that type of district, but it wasn't a great use in that particular location. He said he would not support a rehearing. Mr. Lee said the duplex was a creative use of that property and created an extra housing unit that the City needed. He said it was a very challenging place to build anything and that he would support a rehearing.

Acting-Chair McDonell said the Board had to determine whether or not they made an error in their decision. He said they could as a Board not be fully in agreement about whether there was a diminution in value of surrounding properties, noting that the Board clearly had that disagreement the last time around. He said he didn't see any error the Board made in concluding what they did, notwithstanding that they still seemed to fall on the sides they fell on back in November. He said he was still in favor of denying because he thought it would be an alteration in the essential character of the neighborhood and a diminution in value of the surrounding properties. He said the property had special conditions but there was nothing that took the extra step to create a hardship. He said the Board had a fair and lengthy discussion and that the motion that was made and approved did not have procedural error or any error in law. He said nothing

he saw in the materials that the applicant submitted for this discussion convinced him otherwise. He said he would vote to deny a rehearing.

Mr. Lee noted that Criteria #4 stated that the value of surrounding properties is not diminished, emphasizing the plural sense of properties. He said the Board might have hung their hat on the fact that the abutter across the street was claiming that the value of one property would be diminished. He said it was his opinion as a realtor of 40 years that, given the location of the property and what was associated with it, it would not diminish the value of surrounding properties in the plural sense, so the Board might have made an error in applying that criteria.

DECISION OF THE BOARD

*Mr. Lee moved to **grant** the request for rehearing, and Mr. Parrott seconded.*

Mr. Lee said he would refer to the reasons he stated during the original hearing, plus the fact that he had taken another look at the plurality of Criteria #4, both of which would constitute grounds to grant the rehearing. Mr. Parrott concurred and referred to his prior comments.

*The motion **failed** by a vote of 4-3, with Mr. Hagaman, Mr. MacDonald, Mr. Mulligan, and Acting-Chair McDonell voting in opposition.*

*Mr. Mulligan then moved to **deny** the rehearing, and Mr. Hagaman seconded.*

Mr. Mulligan said he would incorporate the comments that Acting-Chair McDonell and Mr. Hagaman made. He agreed that the petition was thoroughly vetted in November 2020 and didn't believe that anything had changed since then. He said the Board had not been presented with anything new and that the justifications for denying the variance were still valid.

Mr. Hagaman concurred and had nothing to add.

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

Chairman Rheaume resumed his seat as Chair and Mr. McDonell resumed his seat as Vice-Chair. Mr. Mulligan recused himself and Mr. MacDonald took a voting seat.

IV. PUBLIC HEARING – NEW BUSINESS

A) Petition of PMC Realty Trust, Owner, for property located at 500 Market Street, Unit 2B whereas relief is needed from the Zoning Ordinance for a change of use from Professional Office to Medical Office 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 120 Lot 2-2B and lies within the (CD4-L1) District.

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant, and the owners Dean Mello and Dr. Kelly Parker Mello were also present. Attorney Bosen reviewed the petition.

In response to Mr. Hagaman's questions, Attorney Bosen said there was a total of 115 parking spaces in the condominium complex and that they only needed 113, so there was an excess of two spaces. Mr. MacDonald said the complex was close to the water and might be in the flood zone. He said there also seemed to be nine parking spaces allocated to the building and asked if that was enough for the building's intended use. Attorney Bosen said the flood zone wasn't relevant to the special exception criteria and that the only change in the medical practice would be the addition of a handicap ramp that had already gone before the Historic District Commission (HDC) for design approval. He said the 115 spaces were available for use by any condominium users and that the applicant met the ordinance's shared approach parking calculation of 113 spaces.

Chairman Rheume said the Board had a letter from the Realty Trust stating that the condo association was supportive of the petition. Mr. Mello said there was also a letter of approval from the current owner of the property that he would forward to the Board. Chairman Rheume said the parking calculation for the property was complex and that he wanted to ensure that the Planning Department agreed with the applicant that 113 spaces was the correct amount for the complex. Mr. Stith said the Planning Department didn't verify all the uses based on the ordinance but would take the applicant's word about the existing uses and that, based on the shared calculation table, the column with the greatest number of parking calculations was the required parking and that the Planning Department agreed with the applicant.

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

Mr. Lee suggested stipulating that the Board get the approval document from the condo association. Mr. Stith said the letter was uploaded to the permit, and he read it into the record.

*Mr. Lee moved to **grant** the special exception for the petition as presented, and Mr. Parrott seconded.*

Mr. Lee noted that the only exterior structural alteration would be the ramp and that the petition met all the special exception criteria otherwise. He said the project would pose no hazard to the public or adjacent properties due to fire, explosion, release of toxic materials, and so on. He said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. He said there would be no excessive demand in municipal services,

including water, sewer, police and fire protection and so on, and no increase of stormwater runoff onto adjacent properties or streets. Mr. Parrott concurred and had nothing to add.

Chairman Rheume said he would support the motion. He said a concern would normally be the creation of a traffic safety hazard or substantial increase in the level of traffic congestion, but he didn't think the use would be more significant than any other business use. He said the vehicle control in and out of the complex was also greater than many similar properties.

The motion passed by unanimous vote, 7-0.

Mr. MacDonald recused himself from the following petition.

B) Petition of Brett & Stefanie Berger, Owners, for property located at 71 Brackett Road whereas relief was needed from the Zoning Ordinance to remove existing deck and construct a 15' x 15' rear addition with new 15' x 45' deck which requires the following: 1) A Variance from Section 10.521 to allow a 10 foot rear yard where 30 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 206 Lot 14 and lies within the Single Residence B (SRB) District.

SPEAKING TO THE PETITION

The applicants Brett and Stefanie Berger were present and reviewed the petition and criteria. They stated that the abutting side neighbor were in full support of the project.

Mr. Hagaman said the applicant had noted that the design could change. He asked if the roof line that sloped back toward the house would change and if it would impact the rest the layout. Mr. Berger said the depicted roofline wasn't accurate and that they would have a gambrel roof going away from the house. He said the design would be as presented otherwise. Mr. Stith noted that if the roofline changed, the Board's approval would be acceptable for any variant roofline for a one-story structure only. Mr. Hagaman said the bump-out seemed to be driving the 10-ft setback and asked if the stairs would still require a 10-ft setback relative to the property line if there was no bump-out. Mr. Berger said it would be close. Mr. Stith said that steps under 18 inches would not have to adhere to the setback. Chairman Rheume said there was nothing in the Staff Report about there having been a previous variance for the ramp, and he thought it was possible that a permit was pulled but didn't require a variance because it was a handicap access. He said a set of stairs in the back could intrude but that they may have been grandfathered in.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variances for the petition as presented and advertised, and Vice-Chair McDonell seconded.*

Mr. Mulligan said it was a reasonable request and agreed with the applicant's conclusion that expanding the property in any other direction didn't make sense. He said the special conditions of the trapezoidal nature of the lot was challenging and already violated the setback, and that it was significant that it abutted municipal property that was lightly used, if at all. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the residential character of the neighborhood would not be altered and the public's health, safety, and welfare would not be negatively impacted. He said substantial justice would be done because the loss to the applicant would far outweigh any gain to the public if the Board were to require strict compliance with the rear setback, noting that there was no property owner behind the applicant's property because it was municipal. He said granting the variances would not diminish the values of surrounding properties because the design would enhance the property's value as well as surrounding properties. He said literal enforcement of the ordinance would result in hardship. He said the property's special conditions were the odd shape of the lot, including the slanting rear lot line driving the relief, and the existing nonconforming house that was oriented toward the rear of the property. He said the adjacent abutting property to the rear was municipal property that would suffer very little, if any, negative impacts due to the setback violation. He said there was no fair and substantial relationship between the purpose of the rear setback requirement and its application to the property. He said it was a reasonable use, a residential use in a residential one, and met all the criteria.

Vice-Chair McDonell concurred and had nothing to add.

Chairman Rheume said he would support the motion. He noted that the municipal use behind the property was a graveyard. He said the existing house was pushed to the back end of the property and that the front yard had a significant slope that it wasn't very useful for entertainment, so having more space in the backyard made more sense. Relating to the deck, he said the applicant could put a patio without needing relief but thought the current elevation of the house would make it difficult and that the height of the rear was not excessive.

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

C) Petition of **685 State Street, LLC, Owner**, for property located at **685 State Street** whereas relief was needed from the Zoning Ordinance to add a fifth dwelling unit to an existing four unit building which requires the following: 1) A Special Exception from Section 10.440 Use #1.63 to allow a building existing on January 1, 1980 with less than the required lot area per dwelling unit to be converted into five units. Said property is shown on Assessor Map 137 Lot 11 and lies within the General Residence C (GRC) District.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant. The owner Sharon Weston and the project designer Arilda Densch were also present. Attorney Phoenix reviewed the petition and the special exception criteria.

In response to Mr. Hagaman's questions, Ms. Weston said they would improve the existing deck and that it would be the same size. Mr. Stith clarified that there were five required parking spots but that six were provided. Chairman Rheume noted that the ordinance referenced five dwelling units plus a bicycle space, and he asked if the sixth space would constitute a bicycle space. Mr. Stith said the sixth space didn't indicate the bicycle space. Attorney Phoenix said there was space on the patio to park a bike and that there were several other places to park a bike.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one rose to speak. Chairman Rheume noted that there was a letter of support from a Winter Street resident and he closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair McDonell moved to **grant** the special exception, and Ms. Eldridge seconded.*

Vice-Chair McDonell said the ordinance required a special exception because there was less than the required lot-area-per-dwelling unit. He said granting the special exception would pose no hazard to the public or adjacent properties due to fire, explosion, release of toxic materials, and so on. He said no one articulated any concern about that and there would be no real change to the property, with the exception of a small apartment unit. He said there would be no detriment to property values in the vicinity or change to the essential character of the neighborhood on account of the location or scale of buildings, other structures, parking areas, accessways, smoke, pollutants, noise, unsightly storage of equipment, and so on. He said the applicant was providing more parking than required. He said there would be no creation of a traffic safety hazard or substantial increase in the creation of traffic congestion in the vicinity because there would be more parking required, and the addition of one single unit in an uncongested area would not create a safety hazard. He said an additional unit would pose no excessive demand on municipalities including water, sewer, police and fire protection, schools, and so on, nor would it pose significant increase of stormwater runoff onto adjacent properties or streets because there would be no real change to the exterior of the property.

Ms. Eldridge concurred and had nothing to add.

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

Ms. Eldridge returned to alternate status and Mr. MacDonald took a voting seat.

D) Petition of **Cherie Holmes & Yvonne Goldsberry, Owners**, for property located at **45 Richmond Street** whereas relief was needed from the Zoning Ordinance to remove existing garage and rear addition and construct a new garage and 2-story addition which requires the following: 1) Variances from Section 10.521 to allow: a) a 0.5 foot front yard where 5 feet is required; b) a 4.5 foot rear yard where 15 feet is required; and c) a 4 foot right side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) District.

SPEAKING TO THE PETITION

Architect Anne Whitney representing the applicant was present and reviewed the petition.

Chairman Rheume noted that the setback to the original garage based on the previous relief was five feet from the rear property line and that it was being decreased by half a foot. He asked what drove the garage to not be more conforming. Ms. Whitney said the backyard was small and that she didn't want the garage to be right on top of the access from the driveway to the house. She said the back rear wall was adjacent to the Strawberry Banke parking lot and that no structures were impacted on that side. She agreed, however, that she could do the five feet at the rear.

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

*Mr. MacDonald moved to **grant** the variances, with the following stipulation:
- that the garage be located to within a 5-foot rear yard setback.*

Mr. Parrott seconded.

Mr. MacDonald said the property needed some attention and he thought the applicant's plan proposed some things that would improve the property, its safety, and the longevity of the buildings. He said it would improve the property and the neighborhood. Mr. Parrott said the project had a lot of construction but the amount of relief asked for was very modest and would be a nice upgrade to the property. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because it wouldn't change the essential character of the neighborhood or threaten the public's health, safety, or welfare or injure public rights. He said substantial justice would be done because the benefit to the applicant would be significant by being a nice upgrade to the property that would reflect well on his property and would not diminish the value of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions

of the property, including a small lot in a congested area. He said the property had some age and that the small request was reasonable to let the owner replace in kind with respect to the existing setbacks. He said if the modern setbacks were enforced, it would be a detriment to the property and would serve no purpose for anyone. He said the use of the property would continue to be residential and thought the proposed use was reasonable.

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

E) Petition of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue** whereas relief is needed from the Zoning Ordinance to convert an existing garage into a Detached Accessory Dwelling Unit which requires the following: 1) A Variance from Section 10.521 to allow 0 feet of street frontage where 100 feet is required. Said property is shown on Assessor Map 229 Lot 4 and lies within the Single Residence B (SRB) District.

Chairman Rheaume said the applicant wanted to postpone the petition to the February 17 meeting because of two issues, one of which was the easement issue.

DECISION OF THE BOARD

*Mr. Parrott moved to **postpone** the petition to the February 17, 221 meeting, and Mr. Mulligan seconded.*

Mr. Parrott said it was the applicant's first request to extend, which was a routine request and one that the Board normally approved. He said it was a reasonable request and should be approved. Mr. Mulligan concurred and had nothing to add.

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

V. OTHER BUSINESS

There was no other business.

VI. ADJOURNMENT

The meeting was adjourned at 9:42 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary