

**MINUTES OF THE  
BOARD OF ADJUSTMENT MEETING  
EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

**7:00 P.M.**

**June 21, 2023**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheame; Paul Mannle; Thomas Rossi; Jeffrey Mattson; ML Geffert, Alternate

**MEMBERS EXCUSED:** Jody Record, Alternate

**ALSO PRESENT:** Stefanie Casella, Planning Department; Jillian Harris, Planning Department

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Chair Eldridge called the meeting to order at 7:03. She introduced City Staff Planner Jillian Harris, who will be assisting Ms. Casella moving forward. She briefly reviewed the items that would be heard at the June 27 meeting. She stated that Alternate Ms. Geffert would take a voting seat for all petitions and approvals.

**I. APPROVAL OF MINUTES**

**A.** Approval of the May 16, 2023 minutes.

*The May 16 minutes were **approved** as submitted by unanimous vote.*

**B.** Approval of the May 23, 2023 minutes.

*The May 23 minutes were **approved** as amended by unanimous vote.*

(The amendments were to reflect that the SRA zone should be the SRB zone on page 10, and Mr. Rossi's name was missing the 'I' in at the beginning of the minutes).

**II. OLD BUSINESS**

**A.** Request for 1-year extension - **420 Pleasant Street** (LU-21-126)

**DECISION OF THE BOARD**

*Mr. Rossi moved to **grant** the request for the 1-year extension, seconded by Mr. Mannle.*

Mr. Rheume said he would support the motion but cautioned that the pandemic was starting to run its course as an excuse for not getting a project done that had a building permit.

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

- B. Request for rehearing on the appeal of 1 Raynes Avenue** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

## **DISCUSSION AND DECISION OF THE BOARD**

*Vice-Chair Margeson moved to deny the rehearing, seconded by Mr. Rossi.*

Vice-Chair Margeson said she wasn't sure if the Board was allowed to do a motion for a rehearing on a remand from the Superior Court, but pursuant to Paragraphs 1 through 9 of the motion that related to Mr. Rheume's participation and the rehearing, she said it wasn't a matter that she thought was in the Board's purview to weigh in on. She said the ZBA was a board of statutory jurisdiction and the administrative code of the City and beyond the Board's jurisdiction. She said the issues raised in Paragraphs 11 through 13 as to the participation of Mr. Pezzullo was something dealt with in the remand from Superior Court and that she didn't find that the ZBA had jurisdiction over that matter as well. She said the rest of the appeal had to do with the parking that was a matter on the remand from the Superior Court but thought it wasn't well pleaded and didn't think it was appropriate to supplement the record at this time, given the limitations the Board was given when they first looked at it. Lastly, she said the issue of Paragraph 13 about the possible contamination of the site with hazardous waste was not something that was part of the remand from the Superior Court. Therefore, she said she did not find that the Board had any need to or were even allowed to hear the motion for rehearing. Mr. Rossi said he did not attend that meeting but familiarized himself with the facts of the matter and concurred with Vice-Chair Margeson's statements.

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

- C. Request for Rehearing - 170 Aldrich Road (LU-23-47)**

## **DISCUSSION AND DECISION OF THE BOARD**

Mr. Rheume said he wasn't at the meeting but watched the proceedings on the video. He said that, due to the communication issues with the applicant and his presentation, one of the key factors that seemed to turn the Board's opinion about the case was the presentation by the attorney for an abutter who presented a lot of information and the applicant didn't have an effective opportunity to rebut that opinion due to technical issues. He said the applicant was attending remotely and the testimony by the opposing attorney was an influential discussion and that the applicant would normally have an opportunity to come back during the 'to, for, or against' section to rebut the information from the opposing attorney but wasn't able to due to technical issues. He said it made sense to rehear the case out of fairness. Ms. Geffert said the Board should encourage the applicant to be present in person for the rehearing. Mr. Mattson said he normally wouldn't take granting a rehearing lightly but thought the situation with the remote technical difficulties was unique. Chair Eldridge noted that the Board had questions for the applicant that they were not able to get answers to due to the technical difficulties. Ms. Casella said the applicant is always encouraged to participate in any way that they can, but in the past there had not been technical issues, so moving forward she thought presentations from a virtual source should be reconsidered.

*Mr. Mattson moved to **grant** the rehearing, with the **stipulation** that the applicant be required to attend in person. The motion was seconded by Mr. Rheume. The motion **passed** by a vote of 6-1, with Mr. Rossi voting in opposition.*

Mr. Rossi and Mr. Rheume recused themselves from the following request.

**D. Request for Rehearing - 635 Sagamore Avenue (LU-22-209)**

**DECISION OF THE BOARD**

*Vice-Chair Margeson moved to **grant** the rehearing.*

She said the process of the Board was perhaps not the cleanest that it could have been, but the reliance on Walker v. City of Manchester in terms of finding the abutting properties nonconforming was misplaced. She said Sagamore Court was property zoned General Apartment Mobile Home, and although the Tidewatch Condominiums was in the SRA zone, it was a planned unit development because it was over 10 acres.

*No one seconded the motion.*

*Mr. Mattson moved to **deny** the rehearing, seconded by Mr. Mannle.*

Mr. Mattson said Vice-Chair Margeson made an interesting point but that he hadn't received any extra information regarding Walker v. City of Manchester, so he was not convinced to change his previous position of not granting the rehearing. Mr. Mannle said he thought there were a few confusing parts of trying to single the parcel out and that it was unrelated to Tidewatch Condominiums. He said Tidewatch was a new development with ten acres, and if the applicant's parcel was 10.2 acres, the Board would be dealing with the same thing. He said it was in the SRA

zone and the zoning request was for a living unit. He said it could have been a duplex or triplex. He said if the applicant had a petition for two buildings with garages that were two units each and copied the same style and floorplan as Tidewatch, the Board would be doing this again. He said the original decision to deny was proper and that he would support the motion. Ms. Geffert said she appreciated the observation by Vice-Chair Margeson of the Walker v. City of Manchester case but thought the Board was looking at the character of the area on each side of Sagamore Avenue and the character of the current use, which was a dilapidated industrial nonconformance, so honoring the zoning ordinance took on a broader perspective based on the current nonconforming use. She thought the Board correctly assessed the four-unit residential development following the spirit of the ordinance and one of the things that swayed her was that the applicant changed it from five units to four to make it more in keeping with the surrounding area and lot coverages in the existing zoning. She said she understood how the Walker v. City of Manchester case could be interpreted but thought the applicant's parcel was a special one and its current nonconforming use made the Board's consideration different than the Walker case. Chair Eldridge said the request for rehearing relied on seeing the development as overly crowded when in fact each house was on about a half-acre and met all the setback requirements, and she felt that the Board judged it correctly.

*The motion **passed** by a vote of 4-1, with Vice-Chair Margeson voting in opposition.*

Mr. Rossi and Mr. Rheaume returned to their voting seats. Mr. Mattson recused himself from the following petition.

- E.** The request of **The Islamic Society of the Seacoast Area ISSA (Owner)**, and **Chinburg Development, LLC (Applicant)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District and the Highway Noise Overlay District. (LU-23-57)

## **SPEAKING TO THE PETITION**

[Timestamp 33:05] Attorney Justin Pasay was present on behalf of the applicant, with project engineer John Chagnon, architect Carl Goodnight, and realtor Colton Gove of the Gove Group. Attorney Pasay briefly reviewed the application and seven exhibits. He said nine condominium units were proposed, with one affordable unit, and he described what the units would look like.

[Timestamp 38:35] Mr. Chagnon reviewed the site plan and said they would meet with the Technical Advisory Committee (TAC) to review landscaping, utilities, and other features.

In response to Mr. Rossi's questions, Mr. Chagnon said the parking area at the back of the lot encroached into the easement and would be paved. He said it would require a joint use agreement with Public Service that would be part of future approvals.

[Timestamp 45:03] Attorney Pasay reviewed the criteria and said they would be met. In response to Mr. Rheume's questions, Attorney Pasay said the development would be a multi-family condominium one, and each of the units would be for sale and the owners would be part of the condo association. He said the timeframe and the proposed affordable unit were issues addressed at the site plan review. He said they hadn't designed which unit would be the affordable one but if the variance was granted, they would put a more formal proposal together regarding the specific nature of the affordable unit and reference the Statute with the Planning Board. It was further discussed.

Attorney Pasay said the recreation area was stated as an amenity to the neighborhood residents but would only be utilized by the owners for the condominiums. Mr. Rheume said that was something different than stating that it would be open to the neighborhood residents. Mr. Rheume referred to the square foot per dwelling units. He said if the units were reduced to eight, the calculation would be 7,847 sf per dwelling unit, which would be around 7,995 sf per unit. He said it was also a bit above the 7,500 sf per dwelling unit for the GRA district. He said the closest other residential area was all GRA, which would be at 7,500 square feet. He asked why the ninth unit was needed and what the negative impacts would be if the Board felt that eight units were more appropriate. Attorney Pasay said the proposal had already gone from 10 units to nine, and one of the units would be affordable. Mr. Gove said they could get rid of the affordable unit and the 7,800 square feet but figured that the affordable unit was more important to everyone. Mr. Mannle said the development would be in character with the rest of the neighborhood. Attorney Pasay said four units out of 14 in the immediate vicinity were multi-family or two-family units. Mr. Mannle said the chart stated that there were five multi-family units, and out of those six extra units, he asked how many were 2,100 square feet. Attorney Pasay said he didn't have that information. Mr. Mannle asked why the applicant would compare it with an ADU or an apartment that was 400 square feet and say it was the same. Attorney Pasay said they were comparing the number of units to the size of the lots and suggesting that their proposal with nine units was roughly equivalent to the density.

Mr. Rossi said the density calculations were perplexing to him, like having multiple units per structure v. one unit per structure, or two v. three and so on. He said how it would change if it were looked at in terms of the number of structures on the property as opposed to the number of units. He said he didn't see anything in the immediate area with that dense of an allocation or use of multiple structures on a similar-sized property. Attorney Pasay said it went to the uniqueness of the property, a 1.44 acre parcel that had an odd configuration. He said when the available upland on the property was contracted and the ability to develop it made economic sense against the idea of proposing a subdivision road and making lot sizes that were consistent, it became a question of feasibility and viability, and the result was a condo proposal. He said it was a novel approach to developing the property that avoided tons of impervious surface in the form of a big road that the City wants to accept and also avoided a subdivision process. He said they focused on the dwelling unit per lot area calculation because it was the most reasonable approach to comparing the density of the properties. Mr. Rossi said when seeking variances from both the number of dwelling units per

building and the number of square feet per dwelling unit, it got a bit hard to compare on an apples-to-apples basis with surrounding properties.

Vice-Chair Margeson commented that the most problematic part of the application was the two-family dwelling units, which were not allowed in the SRB zone, and the five freestanding buildings and the density relief. She said the parcel was about 1-1/2 acres, and an argument could be made that the applicant might have a hardship due to the small frontage from the street for putting three single-family dwellings on the property. Attorney Pasay said the basis and the law behind the hardship analysis went to whether there were unique circumstances of the property and whether or not applying the specific ordinance in question to the property due to the unique circumstances accomplished the goal of the ordinance. He said they had an ordinance that prohibited on some level multiple buildings and prohibited two-family dwellings. In that context, he said the question was whether or not applying the ordinance accomplished the prohibition on those types of uses in the zoning ordinance, and he said the answer had to be no. He said there were duplexes that surrounded the property and the purpose of the ordinance was not being satisfied by applying it to the property. He said the same applied to the density analysis, which he further explained. [Timestamp 1:05:58]

Vice-Chair Margeson said the property was subdivided and enough street frontage would be needed to access all three of the dwellings. She asked for further explanation about subdividing the property even with the 47-ft front line. Attorney Pasay said at some level, there needed to be a private road proposal or a condo development or relief to accommodate a city road so that the lots interior to the property had frontage in a manner consistent with the zoning ordinance. He said it would require a lot of relief. Mr. Chagnon said the existing lot was oddly shaped and if it were properly configured in a way that could be subdivided, it would be an equivalent area of property to a similar block. He said there were eight or nine units in that block and by today's standards, it couldn't be subdivided in the same way but by past standards it would have worked out to nine lots.

Ms. Geffert asked the applicant to address the noise overlay by creating dense housing units so close to a highway and to also address parking on the lot. Attorney Pasay said the design accounted for the fact that there would have to be additional design criteria and standards met. Mr. Chagnon said the driveways were at least 20 feet from the curb line, so each unit would have a garage space and room to park a car outside. He said other spaces could be dedicated for additional parking if TAC felt that there should be more.

Chair Eldridge opened the public hearing.

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

No one spoke, and Chair Eldridge closed the public hearing.

### **DISCUSSION AND DECISION OF THE BOARD**

Mr. Rheume said it came down to an SRB lot and whether a single residence was an appropriate use for the lot. He said the board previously on two occasions said no and agreed that a single residence use was not a proper use for the property. He said the Board generally didn't want

duplexes in an SRA district, but in that case the property was remote and not visible to most people, so he found that it was less of an issue. He said the property was in some ways misplaced in the SRB district because it was surrounded by businesses or other duplexes and was more akin to the GRA zone. He said he felt more comfortable putting the parcel into that envelope. He said the issue he most struggled with was the density issue. [Timestamp 1:19:50] Mr. Mannle said he thought nine units were too much for the lot. He noted that the applicant said they could get rid of the affordable unit if they lost a unit, and he said it didn't work that way. Mr. Rossi said he didn't place much value on the affordable unit because it was a difficult location for residential use and he couldn't see the units commanding a premium in the market.

Vice-Chair Margeson said she would not support the application because the request was turning the lot into something more like the GRA, GRB, and GRC zones, and that was moderate to high density. She said the GRA and GRB zones were not really contiguous to the lot but were more contiguous to the SRB lot across the street. She said in terms of the previous variances and special exceptions granted for the lot, the places of religious assembly are allowed by special exception for the SRB zone and the variance was for the 47 feet of street frontage. She said if the applicant didn't get it, they would not be able to build on the lot. She said she didn't think the applicant demonstrated hardship for the two-family dwellings and the amount of dwellings on the lot. She said she could probably find a hardship, given the street frontage and the size of the lot, for three single-family dwellings but couldn't find it for the two-family dwelling relief and the density relief. She said it was a large lot that could probably get three lots for the SRB calculation, which would bring it down to below what was allowed under the GRA, GRB or GRC zones. For those reasons, she said she could not support it but could support the frontage relief because if that was denied, the applicant would not be able to build. Mr. Rossi said he concurred in general. Chair Eldridge said it was a great project and if the rules were followed, it would be an exceptionally large lot for one home, but she couldn't see the hardship. She said the uniqueness of the property wasn't really driving the way that the applicant proposed to use it.

*Mr. Mannle moved to **grant** only the variance for the 47-ft variance (Item 3.b). Vice-Chair Margeson seconded.*

Mr. Mannle said approving the 47-ft variance request would not be contrary to the public interest because the frontage was big enough for cars but not big enough for zoning. He said it was an access point for a 1-1/2 acre lot. He said it would observe the spirit of the ordinance and substantial justice would be done because access to the property was needed. He said it would not diminish the values of surrounding properties because they would not be affected. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, noting that the lot's hardship was having the remnants of subdivisions that took effect when Route 95 was built. He said the original size of the lot went across the street and further down. He said the parcel was one huge one at the time and got cut up, and the sliver with 47 feet of frontage was left over. He said not granting the variance for it would result in a hardship. Vice-Chair Margeson said the special conditions of the property is that it has just 47 feet of street frontage, so owing to those special conditions, it can't be reasonably used and there is no fair and substantial relationship between the purposes of the zoning ordinance and its application to the property.

*The motion **passed** by unanimous vote, 6-0, with Mr. Mattson recused.*

*Vice-Chair Margeson moved to **deny** the request to construct four duplexes and one single living unit to create a total of nine living units which requires relief from Section 10.440 (use 1.30) to permit four two-family structures where they are not permitted, and Section 10.513 to permit five freestanding dwellings where not more than one is permitted, and Section 10.520 for 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required. Mr. Mannle seconded the motion.*

Vice-Chair Margeson said the two-family dwelling relief, the one dwelling per lot relief, and the density relief were contrary to the public interest and the spirit of the ordinance. She said the purpose and intent of the SRB district was to have one freestanding dwelling unit on the property and not to have any two-family dwellings on the subject lot. As far as the density relief request, she said the lot was big and the relief would bring the lot size down to 6,975 sf where 15,000 sf per dwelling unit was required, which was also directly contrary to the purpose and intent of the SRB district that required 15,000 sf of lot. She said the application failed the hardship test because the applicant did not demonstrate hardship for having a two-family dwelling unit and more than one dwelling unit per lot for the density relief. Mr. Mannle concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0, with Mr. Mattson recused.*

Mr. Mattson returned to his voting seat.

### **III. NEW BUSINESS**

- A.** The request of **Charles Silva Jr** and **Margaret Moran (Owners)**, for property located at **434 Marcy Street** whereas relief is needed to construct an addition to the rear of the existing structure, remove the existing shed, and construct a new shed which requires the following: 1) Variance from Section 10.521 to allow: a) 8 foot left yard setback where 10 feet is required; and b) 43% building coverage where 30% is allowed. 2) 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. 3) Variance from Section 10.573.20 to allow a) 1 foot rear yard where 11 feet is required; and b) 1 foot right side yard where 11 feet is required. Said property is located on Assessor Map 102 Lot 41 and lies within the General Residence B (GRB) and Historic District. (LU-23-53)

### **SPEAKING TO THE PETITION**

Architect Anne Whitney was present on behalf of the applicant. She said the three immediate abutters were in support of the project. She reviewed the petition and the criteria. In response to Mr. Rheaume's questions, Ms. Whitney said the residents at 28 South Street had a 6-ft fence toward the back of the applicant's property that went down to around four feet. She said the existing shed became the fence on that side. She said the applicant would fill in that fence to keep it at the 6-ft



height and that the abutter agreed. She said the new shed would be about 11 feet tall and have a small gable roof that would stick up above the fence a bit, so the neighbors would see some siding and some roof. She said the ordinance's maximum for a fence was six feet.

Chair Eldridge opened the public hearing.

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

No one spoke, and Chair Eldridge closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Mattson moved to **grant** the variances for the petition, seconded by Mr. Mannle.*

Mr. Mattson said granting the variances would not be contrary to the public interest because the proposed use was not in conflict with the explicit and implicit purposes of the ordinance and would not alter the essential character of the neighborhood, threaten public health, safety or welfare or otherwise injure public rights. He said it would observe the spirit of the ordinance because it was a small and modest addition that would be minimally visible from the street and entirely within the character of the neighborhood. He noted that it would also be going before the Historic District Commission. He said granting the variances would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the public or other individuals. He said it wouldn't really be visible from the street, and the improvements to the property would benefit the applicant and do no harm to others. He said granting the variance would not diminish the values of surrounding properties, noting that there was no suggestion that this would be the case. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the property had special conditions that distinguished it from others in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance's provision and the specific application of that provision to the property. He said it was a reasonable proposed use of the single family residence on a small, undersized lot that was half the size of what was permitted in the already dense zone. He said the purpose of preserving air, light and privacy would be preserved with the very modest change to the structure. Mr. Mannle concurred. He said the property was in the south end, where nothing conformed. He said the request was small except for the shed, but the existing shed would be gotten rid of, which was a tradeoff that didn't bother him. Vice-Chair Margeson said she would not support the motion. She said the proposed shed brought the right and rear setbacks way out of conformance and thought a smaller shed could have been put in the existing footprint.

*The motion **passed** by a vote of 6-1, with Vice-Chair Margeson voting in opposition.*

- B.** The request of **David Hugh Mason** and **Lisa Ann Mason (Owners)**, for property located at **239 Cass Street** whereas relief is needed to demolish a single story addition on the rear of the primary structure, construct a two (2) story rear addition to the primary structure, and demolish and enlarge existing garage which requires the following: Variance from Section 10.521 to allow: a) 1 foot right yard where 10 is

required for the primary structure; b) 3 foot left yard where 10 is required for the accessory structure; c) 4 foot rear yard where 20 is required for the accessory structure; d) 37% building coverage where 30% is allowed on the lot. Said property is located on Assessor Map 147 Lot 4 and lies within the General Residence C (GRC) District. (LU-23-69)

## **SPEAKING TO THE PETITION**

Project designer Amy Dutton was present on behalf of the applicant and reviewed the petition and the criteria. [Timestamp 2:03:50]

Mr. Rheume said the proposal was to get a full two stories in the descending topography as opposed to continuing the 1-1/2 story roofline. He said the request was for a lot more than what currently existed and asked if the applicant contemplated continuing the 1-1-2 story roofline and using some selective dormering, particularly on the side away from the neighbor. Ms. Dutton said they had 3'9" knee walls so they would have to do an addition and then dormer it. She said they were trying to not hit the 50 percent rule and impact the existing structure the least amount as possible. She explained that if they were to take 50 percent or more, they would have to comply with the building code 100 percent. She said they proposed about 30 percent, which meant that they would not have to take everything up to the current 2008 building code. She said they could improve the staircase but didn't have to bring it all the way up to a full code staircase. Mr. Rheume asked why the proposed more substantial structure would be less impactful than a 1-1/2 story roofline. Mr. Dutton said they couldn't get the living square footage out of the existing house. She said if the dormered out the existing house, they'd touch that roof and not gain anything. She said there was the issue of hitting the code in the bathroom. Mr. Rheume said the floor plan indicated that the bathroom would be swapped over from the 1-ft setback side to the driveway side and a new bath would be added, which he thought was a decent size in that new extension, but there was the compromise of what the applicant wanted v. what was fair to the neighbors in terms of the new structure being built one foot from the property line.

Mr. Mattson said the only variance the applicant would need would be for the right yard setback if they weren't changing the garage. Ms. Dutton said the existing garage sat one foot and two feet from the property lines and it would still be nonconforming. Mr. Mattson said it would be the expansion of a nonconforming structure. Ms. Dutton said the house didn't comply. Mr. Mattson asked Ms. Dutton to clarify how a 1-ft setback would be gained. Ms. Dutton said they would just be straightening out the foundation. The setback relief requests were further discussed. Vice-Chair Margeson said she shared Mr. Rheume's concerns about the addition on the back, noting that other homes on the street would not have that addition on the back. She said she was concerned about the character of the neighborhood, given the extension on the back, but wasn't sure if there was any basis in the application for that concern. Ms. Geffert confirmed that the applicant would experience a hardship if they weren't able to take the addition up to the proposed height.

Chair Eldridge opened the public hearing.

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

No one spoke, and Chair Eldridge closed the public hearing.

## **DECISION OF THE BOARD**

*Mr. Rossi moved to **grant** the variances for the petition as presented and advertised, seconded by Ms. Geffert.*

Mr. Rossi referred to Sections 10.233.21 and .22 of the ordinance and said granting the variances would observe the spirit of the ordinance and there would be no loss to the public interest by allowing an extension to the rear of the home. Referring to Section 10.233.23, he said granting the variances would do substantial justice because there would be no loss to the community or the town in general that would outweigh the loss to the applicant if the variances were to be denied. Referring to Section 10.233.24, he said granting the variances would not diminish the values of surrounding properties. He noted that the abutters were notified and had the opportunity to express any concerns as to massing and the impact on their properties but didn't. Referring to Section 10.233.25 of the ordinance, he said the existing conditions of the lot are the 1-ft clearance to the right side lot line for the primary structure, so any change to the structure to bring it up to contemporary standards for livability would require a variance, which was a special condition of the property. He said it already existed with essentially a zero lot line clearance that would be increased to one foot and would bring it closer into compliance. He said the same was true for the variances related to the garage and the setback, noting that they were either within the requirements or decreased the amount of noncompliance. He said the current location of the garage was a special condition that allows the new garage to be less noncompliant than the current condition.. Ms. Geffert concurred.

Mr. Rheaume said he would not support the motion. He agreed that the existing 1-1/2 story was one foot off, and the addition on the back bowed out a bit and the applicant was correcting that, but he thought going up a whole story on a 1-1/2 story house wasn't warranted. He said the spirit of the ordinance was to prevent the imposition of light and air on abutters' properties. He said he was fine with the garage but thought the one-foot property line asked for was more than necessary to meet the fundamental objectives of having a larger house. Mr. Mannle agreed but thought the garage was the problem because it was driving three out of 4 variance requests. He said the request was to demolish the garage and have a clean slate. He said the applicant was only going down by a foot for a bigger garage and that he would want to see something more conforming with the zoning. Chair Eldridge said she would support the motion because the fact that the garage would be taller would keep its windows from looking into the neighbors' windows, and the view of the garage from the street would be the same.

*The motion **passed** by a vote of 5-2, with Vice-Chair Margeson and Mr. Rheaume voting in opposition.*

- C. The request of **Danielle Okula, Dennis Okula, and Irinia Okula (Owners)**, for property located at **2 Sewall Road** whereas relief is needed to install a 6 foot fence where along the front of the property which requires a Variance from Section 10.515.13 to allow a 6 foot fence where 4 feet is allowed. Said property is located on

Assessor Map 170 Lot 22 and lies within the Single Residence B (SRB) District.  
(LU-23-71)

**SPEAKING TO THE PETITION**

The applicant was not present.

**DECISION OF THE BOARD**

*Mr. Rossi moved to **postpone** the petition to the July meeting, seconded by Mr. Mannle. The motion **passed** by unanimous vote, 7-0.*

**IV. OTHER BUSINESS**

There was no other business.

**V. ADJOURNMENT**

The meeting adjourned at 9:28 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary