

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

7:00 P.M.

May 23, 2023

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

MEMBERS EXCUSED: David Rheaume

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m.

*Mr. Rossi moved to take Item E for Petition 686 Maplewood Avenue out of order, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

*Mr. Rossi moved to **postpone** Item G until the June 20 meeting, seconded by Mr. Mannle. The motion **passed** by a unanimous vote of 6-1, with Mr. Mattson recused.*

Alternates Ms. Geffert and Ms. Record took voting seats for all petitions.

I. NEW BUSINESS *(Continued from May 16, 2023)*

- A.** The request of **Peter Gamble (Owner)**, for property located at **170 Aldrich Road** whereas relief is needed to demolish the existing garage and construct a new garage which requires the following: 1) Variance from Section 10.521 to allow a) 7 foot right side yard where 10 feet is required; and b) 23% building coverage where 20% is allowed. Said property is located on Assessor Map 153 Lot 21 and lies within the Single Residence B (SRB) District. (LU-23-47)

SPEAKING TO THE PETITION

Applicant Peter Gamble was present via Zoom to review the petition. He said he wanted to demolish the existing garage and build a larger one with a second floor. He said the city inspector said the current garage had to be demolished to do what was necessary for the foundation around the building. He said he had no intention of creating another living unit over the garage. He said the property was unique because it was a corner lot and had a city right-of-way on the fronts and sides that he maintained. He reviewed the criteria and said they would be met. [Timestamp 9:25]

Mr. Rossi asked why the garage footprint was being slightly widened but the right yard setback from the property line would remain at seven feet. Ms. Casella explained that there was an error in the plan and that it was actually becoming two feet wider.

Note: At this point in the meeting, there was a problem with Zoom and the Board couldn't hear the applicant.

*Mr. Rossi moved to take the petition out of order and move it further down the agenda, and Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

[Timestamp 52:25] The Zoom difficulties were fixed, and the Board re-addressed the petition.

Vice-Chair Margeson asked how the upstairs would be heated. Mr. Gamble said the downstairs and upstairs would each have a mini split unit. Mr. Rossi asked if the units would require further variances. Mr. Gamble said they would not because they would hook into the house.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney John McGee was present on behalf of the neighbors Adrian and Andrew DeGraffe at 25 Boss Avenue. He said the applicant didn't meet any of the criteria because it was a single-family residence that Mr. Gamble used as a duplex. Attorney McGee said the applicant already got relief for that nonconformity. He said the applicant already had a garage and the addition would be huge and directly in his clients' view. He said there was no hardship that necessitated having a workout area with a bath facility, especially when no one else in the neighborhood had one. He said there was also a boundary dispute in the area that had to be resolved and would reduce the applicant's lot area. He said he thought there was a new variance that stated that if a person already has a nonconforming use, the person had to get a variance for that before seeking another variance, which might be an issue. He noted the case he read about in the Portsmouth Herald.

In response to Mr. Rossi's questions, Attorney McGee said his client's house was to the immediate left on Boss Avenue and was side-by-side with the applicant's house and that his client's lot was a lot higher. Mr. Mannle noted that Attorney McGee indicated that what the applicant wanted to do was not a hardship because it wasn't modern living. He asked whether a workout space and a bath would be considered modern living. Attorney McGee said the applicant wanted to put up a much larger building and make it a workout space. He said it wasn't a deck or something that would make the building a modern amenity that would be expected to exist in that neighborhood. Chair Margeson said the applicant's building was still 11 feet below the maximum height allowed under zoning. Attorney McGee said it was bigger than what was there now, which was a two-car garage. Mr. Rossi asked how the requested variance affected the alleged property border dispute, since the

rear yard setback wasn't changing. Attorney McGee said it was lot coverage and would be a significant reduction in Area 170. Vice-Chair Margeson asked if the boundary dispute was being settled at the time. Attorney McGee said the dispute was unresolved.

The applicant Adrian DeGraffe said the applicant spoke to them a year ago because he thought there was a differential between the property lines and he wanted to put up a garage. She said he claimed that he owned almost 12 feet in that went right beside their house. She said that was the reason they were in dispute. She said the proposed garage was huge and would be as big as his current home if not bigger. She said the upstairs room would even have a balcony off one side, which most garages didn't have, never mind a full room upstairs and a bath and counters and storage. She thought the intent was to use the upstairs space for something else.

Chair Eldridge noted that the Board received letters from other neighbors in opposition. No one else spoke, and she closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mattson said one of the first things he thought of was that it would be living space above, but his concerns were alleviated by the fact that anything constructed there with a work permit would trigger requiring the applicant to come back before the Board if there was an attempt to make it a living space. Mr. Rossi said he felt that it was too similar to living space and could be utilized that way. Vice-Chair Margeson said she agreed and would not support the application because she was concerned about the possibility of converting living space on the second floor and also concerned about the building coverage if there was a possible boundary dispute.

DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the variance, seconded by Ms. Record.*

Mr. Rossi referred to Sections 10.233.21 and .22 of the ordinance and said the petition failed the test for observing the spirit of the ordinance because the home was in an area of single-family dwellings and the design wasn't consistent with continuing to use the property as a single-family dwelling one. Ms. Record concurred and had nothing to add.

There was further discussion. Chair Eldridge said she would support the variance request because what was asked for was minor and she wasn't willing to presuppose that the applicant wouldn't follow through on what he told the Board. Mr. Mannle agreed said it was a minor request on face value but he could not support it because there were two property lines in dispute. Vice-Chair Margeson said she felt that the garage was more than an accessory building or structure and didn't meet the ordinance's requirements. Mr. Rossi said Attorney McGee referenced the trailer home case heard by the Board the previous week and noted that it specifically addressed that property and wasn't a general comment on how to apply the zoning ordinance. He said it wasn't a precedent that carried over to the applicant's case.

*The motion to deny **passed** by a vote of 4-3, with Mr. Mattson, Chair Eldridge, and Ms. Geffert voting in opposition.*

- B.** The request of **Shawn Bardong and Michiyo Bardong (Owner)**, for property located at **39 Dearborn Street** whereas relief is needed to demolish the existing shed and construct a two-story addition which requires the following: 1) Variance from Section 10.521 to allow a) 5 foot front yard where 15 feet is required; and b) 2 foot right side yard where 10 feet is required. 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. Said property is located on Assessor Map 140 Lot 3 and lies within the General Residence A (GRA) and Historic District. (LU-23-5)

SPEAKING TO THE PETITION

Attorney Amy Dutton was present on behalf of the applicants. She said two items were removed off the plan, and she passed out a printed version to the Board. She said the HDC didn't like the idea of converting the historic Cape into a gambrel but she was now confident that the applicant had come up with a good compromise by creating a glass connector from the Cape to an addition of a Colonial that would house the living room and a primary suite on the second floor, with a small addition off the kitchen. She reviewed the criteria and said they would be met. She said the two items that were different were the chimney that would be removed because it was within the 5-ft setback and the window well was expanded by two feet.

In response to Vice-Chair Margeson's questions, Attorney Dutton said the land near the applicant's lot belonged to Lot 140-7 and they were requesting the easement because they needed five feet for fire code and to get windows. She said the new structure would not intrude on the view area between the abutters.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Michael Stasiuk of 31 Dearborn Street said he was the abutter. He explained why the current plan was at his expense and said he had protection for a 15-ft setback. He said his backyard was small and like a secret garden, but with a 20-1/2' building looming five feet away, it would no longer be a secret. He said the addition would block the sky and light in that direction and would produce light and noise pollution as well as invade his privacy. He asked that the Board's decision be tabled until they could visit his property.

Chair Eldridge said a variance was granted in 2015 for a 5-ft front yard setback. Mr. Stasiuk agreed but said that was for an accessory building. Ms. Geffert asked if the view easement was being granted to Mr. Stasiuk. Mr. Stasiuk agreed.

SPEAKING TO, FOR, OR AGAINST

Attorney Dutton showed how tall Mr. Stasiuk's property was related to the applicant's home. She said the challenge was that the applicant needed to do something on the property to make it a more livable and modern home. She said they were at about 25 percent of lot coverage and would not add to the claustrophobia that Mr. Stasiuk said he would have. Chairman Eldridge asked if the main difference between the current application and the previous one that was approved was the connection between the Cape and the new building. Attorney Dutton agreed.

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

DECISION OF THE BOARD

Vice-Chair Margeson said she voted against the application in February because she thought the Cape would have been destroyed and the HDC wanted to preserve the Cape. She said it was now a new application and that she would be in favor of it. Mr. Rossi said the variances proposed in 2015 with regard to the shed had a number of stipulations, but in 2023 a further variance was issued that did not contain those stipulations, so now that variance was allowed without those stipulations.

*Vice-Chair Margeson moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Mannle.*

Vice-Chair Margeson said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, according to Sections 10.233.21 and .22. She said the proposed use does not expressly or implicitly conflict with the ordinance's provisions, in which case there are setback requirements for the movement of light and air around the structures. She said it was a small yard and the structure would still have space in the back and on the side for light, air and emergency egress. She noted that Section 10.121.6 of the ordinance was for the preservation of historic districts and buildings and structures of historic and architectural interest. She said the variance request was driven by the requirements of the HDC to preserve the 1700's Cape. She referred to Section 10.233.23 of the ordinance and said granting the variances would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the general public. She said the preservation of the 1700s Cape would be a benefit to the applicant and public. Referring to Section 10.233.24, she said granting the variances would not diminish the values of surrounding properties, noting that the Board had testimony from the abutter that the City does not allow for view easements on properties. She said she didn't find that it would diminish the property. She also found that any improvement to a property in general does raise the values of surrounding properties for all those reasons. Referring to Section 10.233.25, she said literal enforcement of the ordinance would result in an unnecessary hardship. She said the board had to show that the property had special conditions that distinguish it from others in the area, and owing to those special

conditions a fair and substantial relationship does not exist between the general public purpose of the ordinance and the specific application of that provision to the property. She said the proposed use is a reasonable one because the property does have special conditions, and part of that is the view easement, which restricts where a structure can be placed on the property. She said putting it more toward the back of the property would be an appropriate placement for it. She said it was an expansion of a house, which was an allowed use in the GRA District. Mr. Mannle concurred and had nothing to add.

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

Note: At this point, the Zoom problem for Petition A was fixed. [51:53]

*Mr. Mannle moved to **re-open** the public hearing for Petition A, seconded by Mr. Mannle. The motion **passed** anonymously, 7-0.*

- C. The request of **Thomas Rooney (Owner)**, for property located at **29 Spring Street** whereas relief is needed to install two mechanical units in the rear of the primary structure which require the following 1) Variance from Section 10.515.14 to allow a) 7-foot side yard where 10 feet is required; and b) 4 foot rear yard where 10 is required. Said property is located on Assessor Map 130 Lot 21 and lies within the General Residence A (GRA) District. (LU-23-55)

The original notice had an error. The mechanical units are proposed to be located in the rear of the primary structure and not the garage as previously advertised.

SPEAKING TO THE PETITION

The owner/applicant Thomas Rooney was present and reviewed the petition. He discussed the setbacks and said he would put the units on the right side of the property that was adjacent to the patio. He said it would not be seen by the abutters and would be out of public view. He reviewed the criteria and said they would be met. Ms. Casella noted that there was an error in the notice sent to the newspaper and abutters that should be stipulated in the motion.

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. Mannle moved to **approve** the requested variance for the application as presented with the following **stipulation**:*

1. *Both mechanical units shall be located in the rear of the primary structure as indicated in the applicant's submission materials.*

Mr. Mattson seconded the motion.

Mr. Mannle said it was a small request and that the hardship existed due to the current location of the primary unit. He said the variances were for one foot and two feet from the side yard, and the house was already placed in a nonconforming spot on the lot. Referring to Sections 10.233.21 and .22, he said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the public wouldn't even be aware of the variance being granted because everything would be hidden behind the primary structure. Referring to Section 10.233.23, he said granting the variance would do substantial justice, noting that the Board had gotten 20-30 requests for heating units on small lots where the lot was nonconforming and they needed that extra foot. Referring to Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the proposed use was a reasonable one. He said the property was already nonconforming, especially where the house was located on the lot. For those reasons, he moved that the petition be approved. Mr. Mattson concurred and said the benefit to the applicant would not be outweighed by any harm to the public. He said another unique condition of the property was that it was an undersized lot and the purpose of preserving air, light, and space was being maintained.

The motion passed unanimously, 7-0.

Chair Eldridge noted that the next petition had a request to be heard at the end of the meeting, but the applicant was present.

Mr. Mattson moved to continue the agenda in order, seconded by Mr. Mannle. The motion passed unanimously, 7-0.

- D. REQUEST TO BE HEARD AT END OF MEETING** The request of **Scott Day and Marta Day (Owners)**, for property located at **18 Walden Street** whereas relief is needed to install a mechanical unit which requires a variance from Section 10.515.14 to allow a) 4 foot side yard where 10 feet is required; and b) 2 foot front yard where 10 feet is required. Said property is located on Assessor Map 101 Lot 20 and lies within the General Residence B (GRB) and Historic District. **REQUEST TO BE HEARD AT END OF MEETING (LU-23-52)**

SPEAKING TO THE PETITION

The owner/applicant Scott Day was present and reviewed the petition. He said the summers were hot and the house sat in the sun all day, which was the main reason for wanting the condenser. He said he proposed to place it on the side of the house because it couldn't be placed under the deck

due to king tides. He said his neighbors approved the location and that it would not affect their views. He reviewed the criteria and said they would be met.

The Board had no questions, and 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 requested variance for the application as presented and advertised, and Ms. Geffert seconded.

Mr. Rossi said granting the variance would not be contrary to the public spirit and would observe the spirit of the ordinance. He said the use of the property as a residential one would not change and it would not be contrary to preserving the historic character of the property. He said granting the variance would do substantial justice because there would be no loss to the public in allowing the units to be placed in the proposed location and it would be a great benefit to the owner to be able to enjoy the property with contemporary standards of comfort. He said granting the variance would not diminish the values of surrounding properties because the unit would not be visible in a substantial way from any of the surrounding areas and would not impact the general feel and look of the community. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the special conditions of the property and on that street in general was that the properties were closely packed because it was a densely settled area, and any upgrade to the HVAC system to meet contemporary standards would require a variance. He said he looked at the property and saw that there was an overhang of a deck where any place the units could go, so a variance was required.

Mr. Geffert concurred and had nothing to add.

The motion passed unanimously, 7-0.

- E. REQUEST TO POSTPONE** The request of **The Islamic Society of the Seacoast Area ASSA (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. **REQUEST TO POSTPONE** (LU-23-57)

DECISION OF THE BOARD

The petition was postponed to the June 20 meeting.

- F.** The request of **Carl Krukoff (Owner)**, for property located at **3360 Lafayette Road** whereas relief is needed to convert a two bay garage into a third living unit which requires the following: 1) Variance from 10.521 to allow 8,002.5 square feet per dwelling unit where 15,000 square feet is required, 2) Variance from 10.331 to allow a non-conforming use to be extended or enlarged without conforming to the requirements of the Zoning Ordinance, 3) Variance from section 10.440 Use #1.51 to allow three (3) dwelling units where one (1) is permitted. Said property is located on Assessor Map 297 Lot 12 and lies within the Single Residence B (SRB) District. (LU-23-59)

SPEAKING TO THE PETITION

The owner/applicant Carl Krukoff was present and reviewed the petition. He said they would not change the footprint but just convert the garage doors in the front to a double window and single window. He said the left side of the garage would have an entryway and a rear entrance into the backyard. He said they would install a kitchen, two bedrooms, and a bath and update the utilities. He reviewed the criteria and said they would be met.

In response to Vice-Chair Margeson's questions, Mr. Krukoff said he could not walk from the house into the current garage. He said his parking plan was to create four spaces that were required by the ordinance. To maneuver the cars, he said the first car nearest to the building would back out and pull into Lafayette Road. Vice-Chair Margeson said the applicant's support for making the multi-family home was the Hillcrest Estates, but that was already zoned General Apartment Mobile Home and Juniper Commons was the Gateway District. Mr. Krukoff said he based it on the color coding on the map. He said there were single-family homes on the other side of his abutter.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

Mr. Mattson said the Board was normally careful in adhering to the single-family districts and the ADU statewide criteria. He said adding some density to the applicant's lot would not change the actual structure or the footprint or size. He said by the nature of the size of the dwelling, it would be in the spirit of the ordinance in terms of providing much-needed housing types. He noted that

another direct abutter in the SRB zone was the 20-condo unit behind the applicant. Ms. Casella said the Juniper Commons plot was a split zone and was half Natural Resource Protection and half G1, so the portion of where the buildings are is G1. The surrounding zoning areas were further discussed. Mr. Rossi said regardless of the different types of zoning in the area, Juniper Collins was visible from the applicant's property and the Weatherstone Condos were in the same zone. He said it seemed that the strict application of the ordinance would not serve a purpose because the area was developed in that matter anyway. Vice-Chair Margeson asked if the Weatherstone Condos were in the SRB zone. Ms. Casella agreed and said she'd have to see if it was a planned unit development. Vice-Chair Margeson said she would not support the application because of the third dwelling unit on the property. She said she thought it was problematic and didn't find any hardship. She said having more than one dwelling unit on the property was taken seriously by the Board.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the public interest would be served by expanding the moderately priced housing stock in Portsmouth. He said substantial justice would be done because he didn't see anything that would outweigh the benefit to the homeowner. He said granting the variances would not diminish the values of surrounding properties. He said it was hard to make a case that they would have any impact on the surrounding properties, which were a high-density development, and condo units in the same zone or the Juniper Commons plot next door and clearly visible from the applicant's lot. He said there would be no change in the external structure, so granting the variance would not have a visible impact on the surrounding properties. As for the hardship, due to where the lot was located in close proximity to both the condos and the other high-density development right next to it, he said he did not see the project altering the basic character of the surrounding area.

Mr. Mattson concurred. He said the proposed use would not conflict with the implicit purpose of the ordinance or threaten the public's health, safety or welfare or otherwise injure public rights. He said the benefit to the applicant would not be outweighed by any potential harm to the public. He said the air, light, and space would be preserved and maintained. He also noted that a precedent for hardship was whether other similarly situated properties in the area, regardless of the district, are in proximity to a property and have similar nonconforming uses that could be a hardship on the property, and he said that would apply here.

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

- G.** The request of **John Heath** and **Michael Meserve (Owner)**, for property located at **955 Woodbury Avenue** whereas relief is needed to construct a shed which requires a Variance from Section 10.571 to allow an accessory structure to be located closer to a street than the principal building. Said property is located on Assessor Map 219 Lot 33 and lies within the Single Residence B (SRB) District. (LU-23-56)

SPEAKING TO THE PETITION

The owner/applicant John Heath was present and said they needed the shed for large outdoor furniture. He noted that the distance from Fairview Drive to the shed would be 45 feet and that arborvitae would hide it from the road. He said the only neighbor who would see the shed was in approval. He said the shed would be 9'8" high in white vinyl to match the house and would sit on concrete blocks. He reviewed the criteria and said they would be met.

Mr. Rossi said putting the shed closer to Woodbury Avenue would be more compliant, noting that the shed could be placed almost parallel to the house. Mr. Heath said there was already a second shed there that contained a lawnmower, kayaks and so on and that the new shed would be next to it. Mr. Rossi said the new shed could go on the front side of the old shed and still be compliant. Mr. Heath said he was told by the Planning Department that there was no compliant location because the shed had to go behind the house and the frontage on both sides of the street was an issue. Ms. Casella said there could not be an accessory structure closer to the road than to the main building. She said the shed could be moved closer to Woodbury Avenue but that was the reason the applicant was asking for a variance. Mr. Heath noted that there was a line of huge trees on both sides of the property that he would not want to remove. Vice-Chair Margeson asked what the other structure in the back shown on the plan was. Mr. Heath said was a shed that didn't exist anymore. He said the chain link fence belonged to the neighbor who had the frontage on Fairview Drive.

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. Mannle moved to **grant** the variance for the application as presented and advertised, seconded by Mr. Mattson.*

Mr. Mannle said putting a shed in his backyard that had plenty of room and coverage was a small ask. He said the hardship was that Fairview Drive was considered to be the applicant's front yard, so unlike most people, the applicant's front yard was the back and front of the house. He said granting the variance would not be contrary to Sections 10.233.21 and .22 of the ordinance. He said it would do substantial justice because the shed would still be 45 feet from the road. Referring to Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties. Referring to Section 10.233.25, he said literal enforcement of the ordinance would result in an unnecessary hardship because the property had special conditions of having two streets. He said the proposed use was reasonable to put the shed back in the front of the house for a lot that size and that the variance should be granted. Mr. Mattson concurred. He said the intent of the ordinance was to not have people putting sheds in their front yards, and the applicant was putting it in the

backyard but the ordinance didn't anticipate that most properties don't have a street in their backyard also.

The motion passed unanimously, 7-0.

- H.** The request of **Shantar Zuidema** and **Abby Zuidema (Owners)**, for property located at **126 Burkitt Street** whereas relief is needed to demolish the existing 10 foot by 16 foot deck and replace with a 6 foot by 4 foot enclosed porch which requires the following: 1) Variance from Section 10.521 to allow a 6 foot right side yard where 10 feet is required, and 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. Said property is located on Assessor Map 159 Lot 28 and lies within the General Residence A (GRA) District. (LU-23-61)

SPEAKING TO THE PETITION

Owner/applicant Abby Zuidema was present and said the deck had to be replaced because it was failing. She said they wanted to increase the air flow in the area and bring in trees and landscaping. She said the porch would not expand the footprint and that proper footings would be put in to support the roof and the door into the backyard. She said the neighbors approved the project. She reviewed the criteria and said they would be met.

The Board had no questions, and 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 application as presented and advertised, seconded by Mr. Mannle.*

Mr. Rossi said it was a logical variance request that would improve the structure and its soundness and would not increase the degree of noncompliance with the side yard setback and not change the use of the property. He said it would be consistent with the spirit of the ordinance for that zoning district. He said it would do substantial justice because there would be no loss to the public based on the improvement of the property. He said the unit would be visible from the street but that it would be a visual improvement and would actually be a gain to the public. He said granting the variance would not diminish the values of surrounding properties because having a well maintained structure in the neighborhood would enhance the values of surrounding properties. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the hardship was that the property could not continue to be used the way it presently was because the side exit and the decking were structurally unsound and presented a safety hazard, so literal

enforcement of the provisions of the ordinance would fly against Section 10.233.25. Mr. Mannle concurred. He said it was a nonconforming lot and people rarely took things down without putting something big up, so if anything, it was making the property less nonconforming.

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

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting adjourned at 9:25 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary